

2. In 2009, FTB sent appellant-husband a Request For Tax Return (Request) for taxable year 2007.
3. After appellant-husband failed to respond to the Request, FTB sent him a Notice of Proposed Assessment (NPA).
4. When appellant-husband failed to timely respond to the NPA, it went final, and FTB subsequently sent him Collection Status Notices (Notices) in 2014 and 2015. FTB addressed at least one of the Notices to appellants' correct address in Lafayette, Louisiana.
5. FTB initiated collection action and received payments of \$10,636.34 on March 8, 2016, \$255.03 on October 1, 2019, and \$1,153.24 on December 13, 2021.
6. On December 14, 2021, appellants filed a 2007 joint California Nonresident or Part-Year Resident Income Tax Return (Form 540NR), reporting taxable income of \$88,800, and no tax due. FTB accepted appellants' 2007 Form 540NR as filed, and treated it as a claim for refund for tax year 2007.
7. On March 4, 2022, FTB issued appellants a partial refund in the amount of \$1,157.13 (\$1,153.24, plus interest).
8. By letter dated March 10, 2022, FTB denied appellants' remaining claim for refund of \$10,652.37, finding that it was untimely.

DISCUSSION

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) No credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the original due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306.)

Appellants did not timely file their 2007 tax return. Accordingly, the four-year statute of limitations expired on April 16, 2012,² four years from April 15, 2008, the original due date of the 2007 tax return. Appellants filed their return on December 14, 2021, and thus it was untimely under the four-year deadline.

As noted above, FTB received payments on March 8, 2016, October 1, 2019, and December 13, 2021. As relevant here, pursuant to R&TC section 19306, only payments made within one year of the refund claim may be refunded or credited. Appellants had only one payment made after December 14, 2020, for \$1,153.24, and FTB refunded that payment with interest to appellants on March 4, 2022. Thus, the remaining claim for refund of \$10,652.37, is untimely.

Appellants contend that their claim for refund should not be time-barred because neither they nor their Louisiana accounting firm were aware that a California income tax return was required to report the sale of appellants' primary residence, and that a federal reporting was not required for said sale. Appellants also argue that the Form 1099-S from the sale of the property and the FTB notices did not have the proper mailing address. However, appellants do not contend that they failed to receive the notices, and at least one of FTB's collection notices was addressed to appellants' new address. In addition, appellants contend that they contacted FTB, and no one could assist them regarding the requirements to report the sale of appellants' primary residence in 2007. Appellants also argue that denying a refund of \$10,652.37 is excessive when they owed no tax.

The statute of limitations may not be equitably tolled. (*U.S. v. Brockamp* (1997) 519 U.S. 347.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) Being unaware of the law does not negate the failure to comply with statutory requirements. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Furthermore, FTB has no duty to inform a taxpayer of the time within which a claim for refund must be filed to avoid the expiration of the statute of limitations. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856). In short, the law does not allow the

² April 15, 2012, fell on a Sunday; hence the due date was Monday, April 16, 2012.

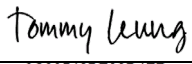
granting of relief under these circumstances. (*Appeal of Estate of Gillespie, supra; Appeal of Benemi Partners, L.P., supra.*)

HOLDING

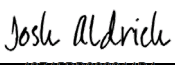
Appellants’ claim for refund of \$10,652.37 for the 2007 taxable year is untimely.

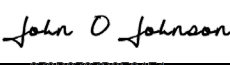
DISPOSITION

FTB’s action in denying appellants’ claim for refund of \$10,652.37 is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Aldrich
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 1/25/2023