

FACTUAL FINDINGS

1. Appellant did not timely file his California individual income tax returns (returns) for each of the Tax Years at Issue.
2. FTB issued appellant Notices of Proposed Assessment (NPAs) for each of the respective Tax Years at Issue. Each NPA became final prior to 2018.
3. In 2015, FTB initiated collection action for the Tax Years at Issue. On April 2, 2020, FTB received the final payment for the Tax Years at Issue.
4. On June 28, 2021, appellant filed his 2012 return. On July 26, 2021, appellant filed his 2013 return. On October 5, 2021, appellant filed his 2015 return.
5. FTB determined that appellant was claiming refunds of all amounts paid exceeding his total tax liability for the Tax Years at Issue.³ On October 18, 2021, FTB denied the 2012 and 2013 claims for refund. On December 13, 2021, FTB denied the 2015 claim for refund. FTB denied all the claims because appellant filed them after the statute of limitations expired.
6. This timely appeal followed.
7. On appeal, appellant asserts that his returns for the Tax Years at Issue were filed shortly after federal audits and Tax Court cases were concluded for the 2007, 2008, and 2010 tax years, and those matters determined uncertain tax attributes and capital loss carryovers upon which accurate returns for Tax Years at Issue depended.

DISCUSSION

If it has been determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) However, R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 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. The taxpayer has the burden of proof in showing that the claim is timely and that

³ On his 2012 and 2013 returns, appellant did not include the amounts collected by FTB.

a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) When a change or correction is made or allowed by the IRS, a taxpayer may file a claim for refund within two years of the final federal determination date. (R&TC, § 19311(a).)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351 (*Brockamp*).) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*).) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant does not contest – and OTA finds no error in – FTB's determinations that his claims for refund were untimely under the four-year statute of limitations. Concerning the one-year statute of limitations, appellant filed his 2012, 2013, and 2015 claims for refund on June 28, 2021, July 26, 2021, and October 5, 2021, respectively. Appellant's last payment was received on April 2, 2020, outside of the one-year statute of limitations period. OTA finds no error in FTB's determinations that appellant's claims were untimely under the one-year statute of limitations.

However, appellant asserts that pursuant to R&TC section 19041.5, any amounts FTB received or collected from appellant became payments only when he filed his returns. Appellant contends that prior to his return filings, the amounts FTB obtained were deposits. Appellant reasons that because his returns and his claims for refund were filed simultaneously, his payments were therefore timely under the one-year statute of limitations.

R&TC section 19041.5(a) generally conforms to Internal Revenue Code (IRC) section 6603, concerning tax deposits.⁴ As relevant here, R&TC section 19041.5(a) provides that “[a] deposit shall not be considered a payment of tax for purposes of filing a claim for refund

⁴ For the Tax Years at Issue, R&TC section 17024.5(a)(1)(P) provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2015 version of the IRC. References to the IRC are therefore to the January 1, 2015 version.

pursuant to [R&TC] section 19306 . . . until . . . [t]he deposit is used to pay a final tax liability.”⁵

There is no dispute that FTB’s NPAs for the Tax Years at Issue went final prior to 2018. It is undisputed that between 2015 and 2020, FTB applied payments made or collected to appellant’s final tax liabilities. Therefore, amounts FTB obtained were payments applied to satisfy final tax liabilities and were not deposits.⁶ Thus, as described above, appellant’s claims for the Tax Years at Issue were untimely under the one-year statute of limitations.

Alternatively, appellant asserts that he recently filed federal returns for the Tax Years at Issue, and that pursuant to R&TC section 19311(a), his claims for refund would be timely for any federal adjustments on the returns. For the 2012 tax year, appellant has provided no evidence that a federal return was filed, and the March 3, 2022, and June 3, 2022 IRS account transcripts in the record show no federal return was filed. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc., supra.*) Appellant has not met his burden for the 2012 tax year.

For the 2013 tax year, appellant contends that a federal adjustment was made because the IRS processed his federal return, assessed tax, and determined that there was a credit balance on account. For the 2015 tax year, appellant contends that a federal adjustment was made because the IRS processed his 2015 federal return, assessed tax, and issued him a refund of the overpaid tax. Appellant provides IRS account transcripts as evidence.

The parties agree that R&TC section 18622 is relevant to determining whether federal adjustments have been made. R&TC section 18622(a) states that “if any item[s] required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer [are] changed or corrected by the IRS,” the taxpayer shall report each change or correction within six months of the date of each final federal determination” The final federal determination is “the date on which each adjustment or resolution resulting from an IRS examination is assessed” (R&TC, § 18622(d).) An IRS account transcript is a valid record of assessment. (Rev. Rul. 2007-21, 2007-14 I.R.B. 865.)

⁵ R&TC section 19041.5(a)(2) also allows the taxpayer to provide a written statement to FTB specifying that the deposit shall be a payment of tax for purposes of R&TC section 19306. Here, appellant does not allege nor show evidence of any written statement he provided to FTB. Thus, OTA does not address this further.

⁶ Appellant asserts that any “substitute” return filed by FTB had no effect on the one-year statute of limitations. OTA believes that by “substitute” return, appellant refers to the NPAs that went final. Appellant provides no authority for his statement. The relevant time frame for the one-year statute of limitations is when payments were applied to final tax liabilities. (R&TC, § 19306(a).)

Here, although appellant filed 2013 and 2015 federal returns, the IRS transcripts do not indicate that the IRS examined the returns, or that it made any changes or corrections. The record does not show that the IRS examined or assessed any additional tax based on an adjustment to appellant's federal tax liabilities, and therefore the extended two-year statute of limitations from the final federal determination date provided in R&TC section 19311(a) does not apply here. As R&TC section 19311 is not applicable here, appellant's claims are untimely.

Appellant asserts that *Boechler, P.C. v. Commissioner* (2022) ___ U.S. ____ (142 S.Ct. 1493) (*Boechler*) provides authority to extend the statute of limitations for reasonable cause where a claim is not timely filed. *Boechler* examined whether the language in IRC section 6330(d)(1), which provides a 30-day deadline for collections due process determinations, was jurisdictional, i.e., marked the bounds of a reviewing court's adjudicatory authority (there, the Tax Court's reviewing authority). (*Boechler* at p. *1497.) The Supreme Court held that the 30-day deadline was not jurisdictional and that it was subject to equitable tolling. (*Id.* at pp. *1497-501.) In making its decision, the Supreme Court distinguished *Brockamp*, where it held that the federal statute of limitations, IRC section 6511, was not subject to equitable tolling. (*Id.* at pp. *1500-501.)

Appellant asserts that R&TC sections 19306 and 19311 are not sufficiently clear and emphatic to preclude equitable tolling. Appellant points to R&TC section 19306's singular use of the word "shall," with reference to credits and refunds, and notes that R&TC section 19311(a)(1) and (a)(2) use the word "may" with reference to claims for refund based on final federal determinations. Appellant further contends that he had reasonable cause for untimely filing his refund claims for the Tax Years at Issue because ongoing federal audits and Tax Court cases had to be concluded to determine the tax attributes and capital loss carryforwards required for appellant to file accurate tax returns for the Tax Years at Issue.

There is generally no equitable tolling for the California income tax statutes of limitation. (*Benemi, supra.*) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth, supra.*)⁷ Because R&TC section 19306 is sufficiently clear and should be strictly interpreted, OTA declines to apply *Boechler* here. As

⁷ R&TC section 19306(a) is clearer and more emphatic than appellant implies, stating that "no credit or refund shall be allowed or made", "unless" a claim is filed within the latest of the statutes of limitation periods. The statute then describes the statute of limitations periods in technical detail with reference to other code sections defining return filing due dates and extension periods. The statute finally reiterates that FTB actions and taxpayer claims for refund are not timely unless performed "before the expiration of th[ose] period[s]."

discussed above, R&TC section 19311 is not applicable here, and there is no need to analyze whether it allows for equitable tolling. The statute of limitations is mandatory and there is no reasonable cause or equitable basis under California law for suspending the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *Benemi*, *supra*; *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)⁸ As applicable here, where appellant untimely filed claims for refund, reasonable cause for the late filing is irrelevant.

HOLDING

The statute of limitations bars appellant’s claims for refund for Tax Years at Issue.

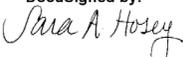
DISPOSITION

FTB’s actions are sustained, as modified by FTB’s concession on appeal of the 2014 claim for refund.

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Asaf Kletter
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 4/27/2023

⁸ There are limited exceptions to the statute of limitations, and only one equitable exception which provides for tolling of the statute of limitations under certain circumstances during any period for which an individual taxpayer establishes a financial disability, which means that the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316.) Appellant has not alleged or offered any evidence of a financial disability as a basis for tolling the statute of limitations.