

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22019471
J. VAZQUEZ AND)
A. VAZQUEZ)
_____)

OPINION

Representing the Parties:

For Appellants: Edward Chavez, CPA

For Respondent: Camille Dixon, Tax Counsel

For Office of Tax Appeals: Lisa Burke, Business Taxes Specialist III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Vazquez and A. Vazquez (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund for \$9,233.00, consisting of an accuracy-related penalty (ARP) of \$8,118.60 and applicable interest of \$1,114.40 for the 2013 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants timely filed the claim for refund for the ARP and applicable interest for the 2013 tax year.

FACTUAL FINDINGS

1. On April 10, 2014, appellants timely filed a joint 2013 California income tax return.
Appeal of Federal Liability
2. The IRS conducted an audit examination of appellants’ 2013 federal income tax return. The IRS audit concluded that appellants had understated their taxable income. As relevant to this appeal, the IRS determined that the understatement of tax was a

“substantial understatement” and imposed an ARP of \$34,136.20, which appellants paid to the IRS.

3. Thereafter, appellants filed for abatement of the federal ARP based on reasonable cause for the underpayment.
4. By letter dated April 11, 2019, the IRS denied appellants’ claim for refund. Appellants requested that the IRS give them appeal rights for the denial of their claim.
5. Appellants’ most recent federal account transcript in the record shows that the IRS had not reduced or cancelled its adjustment.

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6. Appellants notified FTB of the IRS changes by filing an amended California income tax return. In the amended return, appellants agreed to the federal adjustments to their income, which increased their California income tax liability, but they did not include the ARP in the reported amounts.
7. FTB issued a Notice of Proposed Assessment proposing a California ARP of \$8,118.60 plus applicable interest for tax year 2013.
8. On September 26, 2018, appellants paid \$9,268.20 to FTB, which satisfied the amount due.
9. On October 3, 2019, appellants filed a second amended return, reporting the same information listed in their first amended return and claiming a refund of \$9,233.00. Appellants explained that they filed the second amended return as a protective claim for the penalties and interest paid pending resolution of their claim for refund of the federal ARP.
10. Upon review of the protective claim for refund, FTB issued a letter to appellants on January 30, 2020, explaining that the IRS did not reduce or remove the federal ARP. The letter further explained that appellants needed to provide documentation showing that the IRS still was reviewing their account.
11. Appellants provided FTB a copy of their March 3, 2020 letter to the IRS requesting appeal rights.
12. On February 5, 2021, FTB requested appellants to provide an update on their pending federal claim. On March 15, 2021, appellants informed FTB that their claim for refund was still pending at the IRS due to COVID-19.

13. FTB continued to request evidence from appellants that showed the IRS was still reviewing appellants' federal claim for refund. On December 6, 2021, FTB issued a denial of appellants' state claim for refund.
14. This appeal then followed.

DISCUSSION

If taxpayers have overpaid any liability imposed under the Personal Income Tax Law for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayers and the balance shall be refunded to the taxpayers. (R&TC, § 19301(a).) The taxpayers have the burden of proof to show that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

As relevant to this appeal, R&TC section 19311(a)(1) provides that if a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, a claim for credit or refund resulting from an adjustment may be filed by the taxpayers: (1) within two years from the date of the final federal determination or (2) within the general statute of limitations period in R&TC section 19306, whichever period expires later.

Appellants contend that they are entitled to a refund from FTB, but the resolution of their claim for refund of the federal ARP is still pending. Here, the IRS denied appellants' claim for refund of the federal ARP and applicable interest on April 11, 2019. Additionally, appellants' recent federal account transcript in the record shows that the IRS did not reduce or eliminate the federal ARP. Since there is no evidence of a final federal determination demonstrating that the IRS reduced or eliminated the federal ARP, the two-year period from the date of the final federal determination provided by R&TC section 19311(a)(1) is not applicable to this appeal.¹ Therefore, the remaining issue for this appeal is whether appellants' claim for refund is timely filed within the general statute of limitations period prescribed by R&TC section 19306.

R&TC section 19306(a) provides, in part, that no credit or refund shall 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 filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any

¹ However, if the IRS makes a final determination to eliminate or reduce the federal ARP, appellants may file a claim for refund to FTB within two years from the date of that final federal determination.

extension of time for filing the return); or (3) one year from the date of the overpayment. The language of the statute of limitations is explicit and strictly construed. (*Appeal of Khan*, 2020-OTA-126P.)

Here, appellants’ refund claim is barred by the statute of limitations because they did not file their refund claim within the statute of limitations as set forth in R&TC section 19306(a). The first statute of limitations period is inapplicable because the 2013 California tax return was timely filed on April 10, 2014, and is not filed within the extended filing period. The second statute of limitations period, which expired on April 15, 2018, or four years from the April 15, 2014 original due date, was not met because appellants’ protective claim for refund was not filed until October 3, 2019. The one year statute of limitations period also does not apply because appellants paid their liability on September 26, 2018, which is more than one year before the claim for refund was filed on October 3, 2019.

HOLDING

Appellants have not timely filed the claim for refund for the ARP and applicable interest for the 2013 tax year.

DISPOSITION

FTB’s action in denying appellants’ claim for refund is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:
DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

Date Issued: 6/1/2023