

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. WALVATNE (DEC'D)

) OTA Case No. 220410256
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OPINION

Representing the Parties:

For Appellant:	Kathleen A. Walvatne, Trustee for the J. Walvatne Living Trust
For Respondent:	Camille Dixon, Tax Counsel Christopher T. Tuttle, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, John E. Walvatne (Dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$651.01 for the 2015 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Eddy Y.H. Lam held an electronic oral hearing for this matter on March 24, 2023. After the hearing, the record was closed. However, appellant subsequently submitted additional evidence that raised potential factual and legal issues regarding appellant's refund claim. As such, OTA allowed the parties an opportunity to file post-hearing briefs. The record was closed after the parties filed their post-hearing briefs, and the matter was submitted for an opinion.

ISSUE

Whether the statute of limitations bars appellant's claim for a refund or credit for the 2015 tax year.

FACTUAL FINDINGS

1. On October 10, 2017, FTB issued appellant a Demand for Tax Return (Demand) after appellant had not timely filed his 2015 California Resident Income Tax Return (tax return). Through the Integrated Non-Filer Compliance (INC) program, FTB received federal information from Principal Life Insurance Company and Lincoln National Life Insurance Co., indicating that appellant received sufficient 1099-R income to require appellant to file a 2015 tax return. Appellant did not respond to the Demand.
2. On December 13, 2017, FTB issued a Notice of Proposed Assessment (NPA). The NPA did not consider any withholding credits from Principal Life Insurance Company. As relevant to this appeal, the 2015 Form 1099-R issued by Principal Life Insurance Company to appellant reported a state tax withholding of \$400.
3. Appellant did not file a 2015 tax return or timely protest the NPA. Therefore, the NPA became final, and FTB initiated collection action.
4. On November 13, 2018, FTB received a bill payment of \$775.37 from appellant. FTB also wrote off the balance of \$1.39.
5. On September 11, 2020, appellant passed away.
6. On September 15, 2021, the successor trustee of appellant's revocable living trust filed appellant's 2015 tax return. As relevant to this appeal, appellant's 2015 tax return claimed \$400 of withholding credits from Principal Life Insurance Company.
7. FTB accepted the 2015 tax return as filed, abated the late filing penalty, and determined that appellant had an overpayment of \$651.01 in his account.¹ However, FTB notified appellant that it could not refund or credit the overpayment for appellant because the statute of limitations had expired.
8. This timely appeal followed.
9. During the appeal, FTB provided a Demand issued to appellant for the 2013 tax year. The 2013 NPA indicates that FTB applied a withholding credit of \$740. However, compared to the 2015 tax year at issue, no withholding credits were applied in the 2015 NPA.

¹ \$651.01 = [\$167.00 tax liability + \$317.00 collection cost fee + \$41.75 demand to file penalty] – [\$400.00 of withholding credit + \$1.39 write-off + \$775.37 bill payment on November 13, 2018.]

10. After oral hearing, appellant produced a copy of the 2013 Form 1099-R, indicating that \$740 state tax was withheld by Principal Life Insurance Company, which is the same 1099-R payor for the 2015 tax year at issue.
11. FTB filed its post-hearing brief and provided screenshots of its INC program. For the 2015 tax year at issue, the screenshot indicates that the INC program received income information from federal sources, which did not provide withholding information. For the 2013 tax year, the screenshot indicates that the INC program received income information directly from the Employment Development Department (EDD), which provided withholding information.

DISCUSSION

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. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

As appellant's 2015 California return was untimely filed on September 15, 2021, the first four-year statute of limitations is inapplicable. Appellant also does not meet the second four-year statute of limitations because it expired on April 15, 2020, which was postponed to July 15, 2020, due to the COVID-19 pandemic. (See FTB Notice 2020-02.) Lastly, the one-year statute of limitations bars a refund claim for any payments made within the one-year period prior to filing the claim for credit or refund. Here, appellant's most recent payment for the 2015 tax year was made on November 13, 2018. Therefore, the one-year statute of limitations for that most recent payment expired on November 13, 2019. Since appellant's claim for refund was filed on September 15, 2021, which is after November 13, 2019, and no other payments² for the 2015 tax year were made between September 15, 2020, and September 15, 2021, the one-year statute of limitations bars appellant's for a claim for refund.

² By statute, income tax withholding is specifically deemed to have been paid on April 15, 2018, the original due date of the tax return for purposes of determining the statute of limitations. (See R&TC, § 19002(c)(1).)

As relevant to this appeal, TAM 2007-01 distinguishes between two types of payments resulting from FTB’s involuntary collection actions (e.g., liens, levies, or withholding orders); “overpayments,” which are subject to the provisions of R&TC section 19306(a), and “overcollections,” which may be returned to the taxpayer after the statute of limitations for claiming a refund has expired. According to TAM 2007-01, “there is a narrow exception where the statute of limitations provisions do not apply to the return of payments that exceed what FTB is legally allowed to collect and were the result of ‘overcollection.’ An ‘overcollection’ occurs when the amount collected exceeds the amount actually due under the law as the result of clerical or mechanical error.” (*Appeal of Cornbleth*, 2019-OTA-408P.) TAM 2007-01 further states that “[t]he basic rule utilized in distinguishing between an ‘overcollection’ and a barred overpayment is whether amounts collected were based on an assessment that was accurate based on the information available to . . . FTB at the time the assessment was made.”

Appellant asserts that FTB issued an erroneous 2015 NPA because FTB did not apply the \$400 withholding credit reported on Form 1099-R from Principal Life Insurance Company for the 2015 tax year. It appears that appellant is asserting that the 2015 NPA constituted an overcollection, where the statute of limitations does not apply because FTB made a mechanical error when FTB failed to include the \$400 withholding credit from Form 1099-R to the 2015 NPA and other subsequent notices.

OTA disagrees and finds the facts of this case to be similar to Example 4 in TAM 2007- 01, which provides:

The following are situations that do not constitute overcollection. Thus, the refunds are barred by the applicable statute of limitations. These situations involve overpayments that are a result of actions or mistakes by some party other than the FTB, and such overpayments are subject to the applicable statute of limitations. FTB received income information indicating that taxpayer received \$60,005.00 in income during the 2005 tax year. When the taxpayer failed to file a return, FTB issued an assessment for \$3,164.00 in tax based on that income and pursued collection, completely satisfying the assessment. However, after the statute of limitations has expired, the taxpayer files a tax return indicating multiple deductions and credits, which was accepted by the FTB and reduced the tax liability to \$2,000.00. The \$1,164.00 FTB collected over the final liability was not an overcollection. FTB properly based the assessment on correct information. It was the taxpayer’s failure to file a timely return that resulted in the overpayment, not a mistake by the FTB.

Here, the INC program matches income records from various reporting sources to identify individuals who may still need to fulfill their legal requirements to file a California income tax return. For the 2015 tax year at issue, FTB received information from federal sources, which did not report withholding information to the INC program when the assessment was made. Contrarily, for the 2013 tax year *not at issue*, FTB received information from EDD sources, which does report withholding information to the INC program. Although appellant established that there are inconsistencies in that withholding information are not applied for the 2015 tax year's NPA at issue when compared to the 2013 tax year, evidence in the record does not reveal that there was an overcollection or that the statute of limitations does not apply. Here, the 2015 assessment was based on information from federal sources available to FTB through the INC program. There was no clerical or mechanical error by FTB when it made the assessment based on the available information through the INC program, even though federal sources do not report withholding information to the INC program. It was upon appellant's failure to file a timely return that resulted in the overpayment. Accordingly, TAM 2007-01 does not apply to appellant's situation.

Furthermore, there is generally no reasonable cause or equitable basis for suspending the statute of limitations.³ (See *U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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.*) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) 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.) Appellant's claim for refund is subject to and barred by the statute of limitations.

³ There are narrow exceptions where the statute of limitations provisions may be suspended, but appellant has not raised them on appeal and the facts do not support their application here. (See R&TC, § 19316.)

HOLDING

The statute of limitations bars appellant’s claim for a refund or credit for the 2015 tax year.

DISPOSITION

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

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

Date Issued: 7/31/2023