

Board, which reclassified the taxable pension distributions to nontaxable industrial disability income (reclassification decision). The Administrator later provided appellants with a statement, based on the reclassification decision, listing the revised amounts to be reported for the pension distributions for the Years at Issue. As relevant here, the taxable amount to be reported for the pension distributions was reduced to zero.

3. On October 10, 2022, appellants filed joint California Amended Individual Income Tax Returns for the Years at Issue (amended returns). On the amended returns, appellants reduced their adjusted gross income (AGI) by \$8,995¹ and \$107,145, and requested refunds of \$853 and \$10,831, for the respective Years at Issue. Appellants explained that the amended returns reduced appellant A. Garibaldi's reported pension income due to the reclassification decision.
4. FTB issued information and document requests, to which appellants responded. On November 28, 2022, FTB issued Notices of Action (NOAs) denying appellants' claims for refund.
5. This timely appeal followed.²
6. In response to OTA's request for additional briefing, appellants provided additional documentation of the reclassification decision. The Administrator did not withhold any amounts from appellants or require them to repay any amounts after the reclassification decision.

DISCUSSION

Issue 1: Whether OTA has jurisdiction to consider appellants' constitutional or due process claims for the Years at Issue.

This appeal arises from FTB's NOAs denying appellants' claims for refund. As relevant here, OTA's jurisdiction over refund claims is limited to hearing and deciding appeals from FTB's denials. (Cal. Code Regs., tit. 18, § 30103(a).) An administrative agency's authority is of

¹ For the 2015 tax year, appellants subtracted from AGI gross income of \$8,995.00, calculated by subtracting \$2,145.00, the amount of pension distributions excluded from AGI on appellants' 2016 original return (attributable to "PSO," which appellants do not explain), from \$11,140.55, the nontaxable amount under the reclassification decision ($\$11,140.55 - \$2,145.00 = \$8,995.00$). For the 2016 tax year, appellants subtracted from AGI gross income of \$107,145.00, the nontaxable amount under the reclassification decision.

² Appellants' opening brief references the 2017 tax year. However, OTA notified appellants that it accepted their appeal only for the Years at Issue. In additional briefing, appellants stated that as of May 12, 2023, FTB had not yet rendered a decision on their 2017 claim. Thus, the 2017 tax year will not be discussed further.

limited jurisdiction and it “has no powers except such as the law of its creation has given it.” (*Appeal of Moy*, 2019-OTA-057P; *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 105.) OTA has no jurisdiction over (1) “[w]hether a California statute is invalid or unenforceable under the United States or California Constitutions, unless a federal or California appellate court has already made such a determination” or (2) “[w]hether the appellant is entitled to a remedy for an Agency’s actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.” (Cal. Code Regs., tit. 18, § 30104(a), (e).) Further, Article III, section 3.5 of the California Constitution prohibits OTA from declaring a statute to be unconstitutional or refusing to enforce it on the basis that it is unconstitutional unless an appellate court has already determined that such a statute is unconstitutional. (*Appeal of Porreca*, 2018-OTA-095P.)

Here, appellants argue that FTB’s failure to refund excess taxes constitutes a taking of their private property without cause or recourse. Contrary to appellants’ assertions, OTA has no jurisdiction over constitutional or substantive due process claims. (Cal. Code Regs., tit. 18, § 30104(b), (e).) Appellants cite no federal or California appellate court ruling which determined that R&TC section 19306, which sets forth the statute of limitations for filing a claim for refund, is invalid or unenforceable, and OTA finds no such authority. (Cal. Const., Art. III, § 3.5.)

Appellants also claim on appeal that they were unaware of their ability to file a protective claim to avoid expiration of the statute of limitations. They assert that the Administrator had a duty to timely notify appellants of this procedural right and that its failure to give notice to appellants constitutes an extenuating circumstance. However, FTB has no review over the Administrator’s decisions, and accordingly, OTA has no jurisdiction over the Administrator’s action or decisions. (See Cal. Code Regs., tit. 18, § 30104(h).)

Issue 2: Whether the statute of limitations bars appellants from receiving a refund of taxes paid on certain pension income for the Years at Issue.

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 the overpayment. 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.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351). 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.*)

The parties agree that appellants’ claims for refund were untimely filed and barred by the statute of limitations. However, on appeal, appellants assert that they are entitled to “claim of right” refunds based on Internal Revenue Code (IRC) section 1341(a)(1) and (3).

R&TC section 17049 incorporates IRC section 1341, which codifies the “claim of right” doctrine concerning disputed income.³ R&TC section 17049 has three general criteria, corresponding to IRC section 1341: (1) an item of income was included in an individual’s gross income for prior year or years because it appeared that the individual had an unrestricted right to that item; (2) the item is later repaid by the individual during the taxable year for which the return is filed; and (3) the deduction exceeds \$3,000. (R&TC, § 17049(a);⁴ IRC, § 1341(a)(1)-(3).⁵) The deduction is generally claimed in the year of the repayment and there are special rules for claiming the deduction. (See R&TC, § 17049(a); IRC, § 1341(a)(3)-(a)(5).)

³ The “claim of right” doctrine originates from the Supreme Court case *North Am. Oil Consol. v. Burnet* (1932) 286 U.S. 417 (*Burnet*), in which the Court held that the net profits earned by property—over which ownership was disputed—was income to the petitioner company’s in 1917, the year of receipt—and not in 1922, the year the company prevailed in litigation with the government over ownership of the property. (*Id.* at p. 424.) The term “claim of right” refers to the taxpayer’s claim that the disputed income is rightfully his or hers. (See, e.g., *James v. U.S.* (1961) 366 U.S. 213 (Whittaker, concurring) [“claim of right” doctrine refers to the principle that a taxpayer must report in his or her gross income money or property acquired under a “colorable claim of the right to exclusive possession of the money or property”].)

⁴ R&TC section 17049(a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in the trade of the taxpayer, or other property of a kind which would have properly been included in the taxpayer’s inventory if on hand at the close of the prior taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his or her trade or business. There are also special rules for net operating losses or capital losses. (See R&TC, § 17049(e), (f).)

⁵ The second federal requirement, IRC section 1341(a)(2), provides that a deduction is allowable because “the taxpayer did not have an unrestricted right to such item or portion of such item.” Case law holds that a taxpayer

Taxpayers bear the burden of proving entitlement to their refund claims. (*Appeal of Jali, LLC*, 2019-OTA-204P; *Appeal of Cornerstone Compounding Pharmacy, Inc., supra.*) In an action for refund, a taxpayer cannot assert error and thus shift to the state the burden to justify the tax. (*Appeal of Carr, Jr.*, 2022-OTA-157P.) FTB’s determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

Here, there is no dispute that appellants meet the first criterion of R&TC section 17049, *i.e.*, appellants included the pension distributions in their taxable income because it appeared they had an unrestricted right to the pension distributions. However, appellants have not established that the second criterion was met, *i.e.*, following the reclassification decision, they later repaid the pension distributions or no longer had the unrestricted right to those items of income.⁶ Appellants explain that the Administrator did not withhold from the pension distribution, and appellant A. Garibaldi was never required to repay any pension distributions after the reclassification decision.⁷ Therefore, appellants have not established they are entitled to “claim for right” refunds.⁸ A taxpayer’s untimely filing of a claim for any reason bars a refund. (*Benemi, supra.*)

is entitled to a deduction under IRC section 1341 only if a deduction is allowable under other provisions of the tax code. (*Kadillak v. Commissioner* (9th Cir. 2008) 534 F.3d 1197; IRC, § 1341(a)(2); Treas. Reg. § 1.1341(a)(1).)

⁶ Appellants base their claim on IRC section 1341(a)(1) and (a)(3). Like R&TC section 17049(a), IRC section 1341(a) requires all elements of the general rule to be met for a deduction to be allowable for the tax year. Appellants have not shown that they meet the terms of IRC section 1341(a)(2), which requires that “it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item.”

⁷ Appellants cite no authority supporting that the reclassification decision itself constitutes repayment.

⁸ Appellants have not argued that any exception to the statute of limitations applies, such as R&TC section 19316, which extends the time for filing a claim if the taxpayer shows she or he is “financially disabled.” OTA’s review of the record does not indicate that any statutory exception applies here.

HOLDINGS

1. OTA has no jurisdiction to consider appellants’ constitutional or due process claims for the Years at Issue.
2. The statute of limitations bars appellants from receiving a refund of taxes paid on certain pension income for Years at Issue.

DISPOSITION

FTB’s actions in denying appellants’ claims for refund are sustained.

DocuSigned by:

 D17AEDDCAAB045B
 Asaf Kletter
 Administrative Law Judge

We concur:

DocuSigned by:

 0CC6C6ACCC6A44D
 Teresa A. Stanley
 Administrative Law Judge

DocuSigned by:

 CB1F7DA37831416
 Josh Lambert
 Administrative Law Judge

Date Issued: 9/15/2023