

FACTUAL FINDINGS

1. Appellant did not timely file California personal income tax returns for the 2012 or 2015 tax years.
2. On January 29, 2014, FTB issued to appellant's spouse a Demand for Tax Return (Demand) for the 2012 tax year.² FTB did not receive any response to this Demand.
3. On April 21, 2014, FTB issued to appellant's spouse a Notice of Proposed Assessment (NPA) for the 2012 tax year, which proposed to assess tax, penalties, a filing enforcement fee, and interest. Appellant's spouse did not protest the NPA, and it went final.
4. FTB issued to appellant's spouse an Income Tax Due Notice dated September 3, 2014, and a Final Notice Before Levy and Lien dated October 14, 2014. Thereafter, FTB received payments (including transfers from other tax years) totaling \$14,953.31 that it applied to appellant's and appellant's spouse's joint liability for the 2012 tax year. The final payment to the 2012 tax year account was FTB's March 22, 2021 transfer of \$412.31 from appellant's 2020 tax year account.
5. On April 19, 2017, FTB issued to appellant a Demand for the 2015 tax year. FTB did not receive any response to this Demand.
6. For the 2015 tax year, FTB issued to appellant an NPA dated June 19, 2017, which proposed to assess tax, penalties, a filing enforcement fee of \$81, and interest. Appellant did not protest the NPA, and it went final. On September 18, 2017, FTB issued to appellant a Notice of State Income Tax Due for the 2015 tax year, listing amounts due for tax, penalties, collection costs of \$81, and interest.
7. On July 25, 2022, appellant and appellant's spouse untimely filed a joint California Resident Income Tax Return for the 2012 tax year. FTB accepted the amounts reported on the return; accordingly, it reduced the assessed liability and applicable penalties for the 2012 tax year, other than a cost collection recovery fee and a filing enforcement fee.
8. Also on July 25, 2022, appellant filed a California Resident Income Tax Return for the 2015 tax year using the "married filing separately" status. FTB accepted the amounts reported on the return; accordingly, it reduced appellant's liability for the 2015 tax year to \$0 and abated applicable penalties and fees, other than a collection lien fee of \$20. On

² Appellant's spouse is not a party to this appeal.

- September 16, 2022, FTB transferred \$20 to appellant's 2015 tax year account from the 2010 tax year account to satisfy appellant's 2015 tax year account balance.
9. FTB treated the respective July 25, 2022 returns as claims for refund for the 2012 and 2015 tax years. On September 12, 2022, FTB issued to appellant a Notice of Action (NOA) denying appellant's claim for refund of \$81 for the 2015 tax year because the statute of limitations expired. On September 14, 2022, FTB issued to appellant an NOA denying appellant's claim for refund of \$14,045.69 for the 2012 tax year on the same ground.
 10. Appellant timely filed this appeal with the Office of Tax Appeals (OTA).

DISCUSSION

Issue 1: Whether appellant's claim for refund for the 2012 tax year is barred by the statute of limitations.

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; Cal. Code Regs., tit. 18, § 30219(a).)

For the 2012 tax year, appellant's claim for refund was untimely filed on July 25, 2022, more than four years from the due date for filing the 2012 return, and more than one year from the date of appellant's March 22, 2021 overpayment. (R&TC, § 19306(a).) Therefore, appellant's claim for refund is barred by the statute of limitations.

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 failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the

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 [financial disability]; FTB Technical Advice Memo. 2007-01 (Apr. 23, 2007) [overcollections].)

taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie, supra.*) It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Appellant asserts the statute of limitations should be extended in his case because his accountant “fraudulently did not file his returns timely and took possession of his source documents making it impossible for [appellant] to file on his own or hire another CPA.” In support, appellant provided news articles about his accountant’s arrest and subsequent criminal plea regarding insurance fraud. However, as noted above, a taxpayer has a personal, non- delegable obligation to ensure the timely filing of their tax return (*U.S. v. Boyle, supra*, 469 U.S. at pp. 251-252; *Appeal of Quality Tax & Financial Services, Inc., supra*), and there is no reasonable cause or equitable basis for tolling the statute of limitations. A taxpayer’s untimely filing of a claim for any reason bars a refund, even where the tax is erroneously, illegally, or wrongfully collected, or was not owed in the first place. (*Appeal of Benemi Partners, L.P., supra.*) Because appellant did not timely file a refund claim, appellant’s claim for refund for the 2012 tax year is barred by the statute of limitations.

Issue 2: Whether appellant has established entitlement to a refund for the 2015 tax year.

As noted above, a taxpayer has the burden of proof in showing entitlement to a refund. (*Appeal of Estate of Gillespie, supra*; Cal. Code Regs., tit. 18, § 30219(a).) Although FTB’s September 12, 2022 denial of the claim for refund listed \$81 as the amount of the claim, FTB argues that this amount was erroneous. FTB provided a “Tax Year Detail” report showing that the filing enforcement fee of \$81 was abated, and that the only amount appellant paid for the 2015 tax year was a \$20 collection lien fee.

R&TC section 19221 provides for the imposition of a lien fee on a taxpayer. R&TC section 19221(a) provides that any amount due from a taxpayer shall become an enforceable state tax lien if the taxpayer fails to pay the amount due at the time it becomes due and payable. Government Code section 7174 allows FTB to collect the various fees associated with recording and releasing the state tax lien. Once the lien fee is properly imposed, there is no language in the statute that will relieve the fee under any circumstances, including for reasonable cause.

Here, FTB issued notices (including the June 19, 2017 NPA and the September 18, 2017 Notice of State Income Tax Due) informing appellant that failure to pay the liabilities for the

2015 tax year could result in collection action and imposition of collection fees. Thus, FTB properly imposed the lien fee, and there is no basis to abate or refund this fee. The evidence does not establish that appellant paid any other amounts for the 2015 tax year, and thus appellant has not met his burden of establishing entitlement to a refund.

HOLDINGS

1. Appellant’s claim for refund for the 2012 tax year is barred by the statute of limitations.
2. No overpayment exists for the 2015 tax year and therefore appellant is not entitled to a refund for this year.

DISPOSITION

FTB’s denials of the claims for refund are sustained.

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Suzanne B. Brown
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 Suzanne B. Brown
 Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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 Kenneth Gast
 Administrative Law Judge

DocuSigned by:
Asaf Kletter
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 Asaf Kletter
 Administrative Law Judge

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