

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
L. EGWUATU) OTA Case No. 221011741
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OPINION

Representing the Parties:

For Appellant: L. Egwuatu

For Respondent: Paige Chang, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Egwuatu (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,294.46 for the 2014 tax year.

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

ISSUE

Whether appellant’s claim for refund for the 2014 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California tax return for the 2014 tax year.
2. Through its Integrated Non-Filer Compliance Program, FTB obtained information from third parties reporting that appellant received income during the 2014 tax year, indicating that appellant had sufficient income to have a filing requirement for that year.¹
3. On April 26, 2016, FTB issued appellant a Request for Tax Return (Request) requiring appellant to file a 2014 tax return, send a copy of the tax return if one already had been

¹ For the 2014 taxable year, the filing threshold for a single filer under 65 years of age with no dependents was California gross income of at least \$16,047 or adjusted gross income of at least \$12,838.

- filed, or explain why appellant was not required to file a tax return. FTB mailed the Request to appellant at the current address of record in Lakewood, California. FTB did not receive a response to the Request.
4. On July 6, 2016, FTB issued appellant a Notice of Proposed Assessment (NPA) for the 2014 tax year and attached a Quick Resolution Worksheet. The NPA estimated appellant's income to be \$80,560, which included Form 1099 income of \$75,600 appellant received from Brookside Edu. Inc. (Brookside), proposed tax due, and imposed a late filing penalty, plus applicable interest. FTB mailed the NPA to the same Lakewood, California address as the Request. Appellant did not protest the NPA, and it became a final liability.
 5. FTB undertook collection activity, recorded a state tax lien, and imposed collection fees. FTB collected \$645.21, \$186.92, \$2,452.33 on December 3, 2018, March 23, 2021, and July 9, 2021, respectively.
 6. Between July 31, 2022, and August 5, 2022, appellant sent FTB a Quick Resolution Worksheet appellant filled out indicating she was protesting the NPA, a corrected 2017 Form 1099-MISC indicating appellant received \$756 in compensation from Brookside (as opposed to \$75,600), copies of correspondence from FTB, letters, and bank documents regarding levy orders.
 7. On August 8, 2022, appellant untimely filed her 2014 California tax return, reporting \$4,000 in adjusted gross income, \$8 in taxable income, and an overpayment of \$118 in tax. On her return, appellant indicated her address was the same Lakewood, California address that FTB mailed its correspondence and notices to appellant.
 8. FTB issued a Lien Release Notice – Lien Recorded in Error and treated appellant's tax return as a claim for refund, which it denied.
 9. This timely appeal followed.
 10. On appeal, appellant submits a corrected 1099-MISC indicating appellant received \$756 in income; emails dated April 14, 2023, through April 27, 2023, between appellant's former representative² and J. Ford, Brookside's CEO, regarding appellant unsuccessfully trying to obtain physical proof that the corrected 1099-MISC was "actually filed" with

² Appellant was formerly represented by the Tax Appeals Assistance Program; however, representation ceased mid-appeal.

FTB on March 21, 2021; and a letter dated November 23, 2022, from J. Ford to the Office of Tax Appeals (OTA) stating, “Our accountant at the time submitted a revised corrected 1099 to FTB[;] however[,] it appears that it was not received. Our last bookkeeper resent the corrected 1099 on March 31[,] 2021[,] for [appellant] to file.”

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer 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 of the return (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 to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) The law does not provide for the waiver of the statutory period based on reasonable cause. (*Appeal of Khan*, 2020-OTA-126P.) Absent an exception, a taxpayer’s untimely filing of a claim for any reason bars a refund.³ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Exceptions are not granted on equitable bases or for reasonable cause. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant’s 2014 tax return, which was untimely filed on August 8, 2022, is treated as appellant’s claim for refund. The applicable four-year statute of limitations for appellant’s 2014 refund claim expired on April 15, 2019, which is four years from the original due date of the return (i.e., April 15, 2015). Under the alternative one-year statute of limitations, appellant was

³ Though not applicable here, financial disability due to a medically determinable physical or mental impairment is an example of an exception. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

required to file the refund claim no later than July 9, 2022, which is one year from the last payment applied to appellant's 2014 account. Appellant, however, did not file a 2014 return until August 8, 2022, which is after both the four-year and one-year statutes of limitations expired.

Appellant asserts that she did not file a 2014 tax return because her adjusted gross income for 2014 was \$4,000, which does not meet the 2014 tax return filing threshold. Appellant contends that it is not her fault that Brookside filed the original 1099-MISC with the incorrect amount of \$75,600, and that Brookside filed a corrected 1099-MISC "within 30 days of [Brookside] becoming aware of the situation." Specifically, appellant asserts that while Brookside filed the corrected 1099-MISC on March 21, 2021, and appellant emailed it to FTB in April 2021, FTB nevertheless took funds out of her bank accounts in July 2021. Appellant also contends that since FTB recorded the lien in error, and subsequently released the lien, any levied funds should be returned to appellant. In addition, appellant asserts that she did not receive any of the notices and correspondence sent to her at the Lakewood, California address, which appellant contends is her parent's residence, since she moved out-of-state in June 2014, and only returned to California in June 2022.

According to FTB's Technical Advice Memorandum (TAM) 2007-01 (Apr. 23, 2007),⁴ "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." However, as explained in TAM 2007-1, the basic rule utilized in distinguishing between an "overcollection," which is not subject to the statute of limitations, and a barred overpayment, which is subject to the statute of limitations, 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. (See *Appeal of Cornbleth, supra.*) Collection of amounts pursuant to a valid assessment will never result in an "overcollection" situation. To illustrate, TAM 2007-1 provides the following applicable examples, which are quoted below in relevant part:

⁴ See <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2007-01.pdf>.

EXAMPLE 5. FTB received information from [the California Employment Development Department (EDD)] that Maxy, a retailer, filed a W-2 indicating it paid taxpayer Y \$80,000.00 in wages during 2000. When taxpayer Y failed to file a tax return for 2000, a proposed assessment was issued to taxpayer Y based on the \$80,000.00 of income. The assessment thereafter became final and FTB pursued collection activity, collecting all tax, penalties and interest. After the applicable statute of limitations has expired, taxpayer Y establishes that the W-2 was incorrect and taxpayer Y had actually only been paid \$18,000.00. The tax due on the \$18,000.00 is substantially less than that assessed on the \$80,000.00 reported to EDD and the account is adjusted accordingly.

EXAMPLE 6. FTB received information indicating that taxpayer X has a valid real estate license for the 2000 tax year but has failed to file a tax return. FTB ascribed income to taxpayer X based on the real estate license, using the calculated average business income of real estate brokers. FTB issued an assessment, which was collected after it went final. After the statute of limitations had expired, taxpayer X files a tax return establishing that only \$3.00 of income was earned during 2000. The tax is adjusted by FTB, resulting in an overpayment, which is barred from being refunded by the statute of limitations.

In both examples, the resulting overpayment of tax is not an “overcollection” because FTB, which is authorized to estimate and propose an assessment of tax, penalties, and interest when a taxpayer fails to file a return (R&TC, § 19087(a)), did not make a clerical or mechanical error. For each assessment in the above examples, FTB used a method for estimating income that courts have upheld (see *Pollard v. Commissioner* (11th Cir. 1986) 786 F.2d 1063, 1066; *Andrews v. Commissioner*, T.C. Memo. 1998-316), and the assessment was accurate based on the information available to FTB at the time. Rather, it was the taxpayer’s failure to file a timely return that resulted in FTB being barred from refunding the overpayment.

Here, the evidence establishes that FTB did not collect more than the amount due, based on the information available to FTB at the time the NPA was issued. There is no evidence that FTB’s actions involved a clerical or mechanical error. Rather, it was appellant’s failure to file a timely return and timely respond to correspondence and notices FTB sent to appellant that resulted in FTB being barred from refunding the overpayment. OTA finds that FTB’s assessment and subsequent collection activity were legally allowed, and the narrow exception for overcollections does not apply.

Appellant also contends that she did not receive any of the notices and correspondence FTB sent to her at the Lakewood, California address, since she lived out-of-state from June 2014

to June 2022. However, it is well established that notices sent by FTB to a taxpayer's last known address are sufficient, even if the taxpayer does not receive them. (R&TC, § 18416(b); see also *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) R&TC section 18416(c) provides that “[t]he last known address shall be the address that appears on the taxpayer’s last return filed with [FTB], unless the taxpayer has provided to [FTB] clear and concise written or electronic notification of a different address, or [FTB] has an address it has reason to believe is the most current address for the taxpayer.” Here, when appellant filed her 2014 return, she indicated her address as the same Lakewood, California address FTB mailed its correspondence and notices to appellant. While appellant asserts that she did not receive the FTB correspondence and notices since she lived out-of-state during that time, there is no evidence that appellant notified FTB of her change of address or that the mail was returned to FTB as undeliverable. As appellant did not provide FTB notification of a different address, FTB properly mailed appellant the notices to her last known address in Lakewood, California.

HOLDING

Appellant’s claim for refund for the 2014 tax year is barred by the statute of limitations.

DISPOSITION

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

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

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Kenneth Gast

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Kenneth Gast
Administrative Law Judge

DocuSigned by:

Richard Tay

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Richard Tay
Administrative Law Judge

Date Issued: 1/2/2024