

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
S. KING) OTA Case No. 230312845
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OPINION

Representing the Parties:

For Appellant: S. King
For Respondent: Christopher T. Tuttle, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. King (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$2,151.31 for the 2012 taxable year, \$2,290.45 for the 2013 taxable year, and \$474.39 for the 2014 taxable 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, § 30209.05.) Administrative Law Judge Teresa A. Stanley held an oral hearing for this matter, virtually, on January 23, 2024. At the conclusion of the hearing, the Office of Tax Appeals closed the record, and this matter was submitted for an opinion.

ISSUE

Are appellant’s claims for refund for taxable years 2012, 2013, and 2014 barred by the statute of limitations?

FACTUAL FINDINGS

Taxable Year 2012

1. Appellant did not file a timely California Resident Income Tax Return (Form 540) for taxable year 2012.

2. FTB issued a Notice of Proposed Assessment (NPA) based on an estimate of appellant's income, proposing tax of \$1,519, a late-filing penalty of \$379.75, a demand penalty of \$379.75, and applicable interest, and imposed a filing enforcement cost recovery fee (CRF) of \$78.
3. When appellant did not respond to the NPA by May 16, 2014, it went final. FTB started collection action and received payments between October 12, 2015, and November 14, 2016, totaling \$2,561.88.
4. Appellant filed a 2012 Form 540 on April 15, 2019, reporting total tax of \$139.
5. FTB accepted appellant's return as filed and treated it as a claim for refund. FTB reduced the late-filing and demand penalties and interest accordingly, and recalculated appellant's overpayment to be \$2,151.31. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.

Taxable Year 2013

6. Appellant did not file a timely Form 540 for taxable year 2013.
7. FTB issued an NPA based on an estimate of appellant's income and withholdings of \$9, proposing tax of \$1,623, a late-filing penalty of \$405.75, a demand penalty of \$408, and applicable interest, and imposed a CRF of \$76.
8. When appellant did not respond to the NPA by June 26, 2015, it went final. FTB started collection action and received payments between November 14, 2016, and April 11, 2018, totaling \$2,752.09.
9. Appellant filed a 2013 Form 540 on May 15, 2019, reporting total tax of \$185.
10. FTB accepted appellant's return as filed and treated it as a claim for refund. FTB reduced the late-filing and demand penalties and interest accordingly, and recalculated appellant's overpayment to be \$2,290.45. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.

Taxable Year 2014

11. Appellant did not file a timely Form 540 for taxable year 2014.
12. FTB issued an NPA based on an estimate of appellant's income and withholdings of \$104, proposing tax of \$1,694, a late-filing penalty of \$423.50, a demand penalty of \$449.50, and applicable interest, and imposed a CRF of \$79.

13. When appellant did not respond to the NPA by July 8, 2016, it went final. FTB started collection action and received payments of \$942.54 between April 11, 2018, and May 14, 2018. FTB received additional payments totaling \$1,993.37 between May 29, 2018, and December 14, 2018.
14. Appellant filed a 2014 Form 540 on May 15, 2019, reporting total tax of \$257.
15. FTB accepted appellant's return as filed and treated it as a claim for refund. FTB reduced the late-filing and demand penalties and interest accordingly, and recalculated appellant's overpayment to be \$2,467.76.
16. Of the \$2,467.76, FTB applied \$45.86 to appellant's 2017 taxable year and \$388.52 to appellant's 2018 taxable year and on June 5, 2019, FTB refunded \$1,564.70¹ to appellant. FTB denied the remaining overpayment of \$474.39 due to the expiration of the statute of limitations. On July 7, 2022, appellant filed a claim for refund of the remaining overpayment of \$474.39.

Appeal of Taxable Years 2012, 2013, 2014

17. Appellant timely appealed the denial of her claims for refund for taxable years 2012, 2013, and 2014.

DISCUSSION

Generally, no credit or refund of overpaid tax will 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 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).)² A 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.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a claim for refund within the statute of limitations, the claim is barred even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

¹ This amount includes an interest payment of \$5.71 to appellant.

² R&TC section 19316(a) provides for a narrow exception under certain circumstances not relevant to this appeal.

The first four-year statute of limitations period does not apply here as appellant did not file her 2012, 2013, and 2014 tax returns by the extended due dates for the returns. With respect to the second four-year statute of limitations period, the due dates for appellant's 2012, 2013, and 2014 tax returns were April 15, 2013, April 15, 2014, and April 15, 2015, respectively. For 2012, appellant filed her return on April 15, 2019, two years after the statute of limitations period expired on April 15, 2017. For 2013, appellant filed her return on May 15, 2019, after the statute of limitations period expired on April 15, 2018. For 2014, appellant filed her return on May 15, 2019, after the statute of limitations period expired on April 15, 2019. Accordingly, under the four-year statute of limitations period, appellant's claims for refund are barred.

With respect to the one-year statute of limitations period, appellant had withholding credits of \$9 for 2013 and \$103 for 2014. Withholdings are deemed paid on the due date for the tax return, which was April 15, 2014, and April 15, 2015, for 2013 and 2014, respectively. (R&TC, § 19002(c)(1).) Thus, to be within the one-year statute of limitations, appellant must have filed a 2013 claim for refund on or before April 15, 2015, and a 2014 claim for refund on or before April 15, 2016. With respect to withholdings, appellant's claims for refund for 2013 and 2014 were filed on May 15, 2019, well beyond the one-year statute of limitations prescribed in R&TC section 19306(a).

For 2012, appellant's claim for refund filed on April 15, 2019, is timely for payments made within one year, between April 15, 2018, and April 15, 2019. Because appellant's payments were made between October 12, 2015, and November 14, 2016, her claim for refund for 2012 is barred by the statute of limitations.

For 2013, appellant's claim for refund filed on May 15, 2019, is timely for payments made within one year, between May 15, 2018, and May 15, 2019. Because appellant's payments were made between November 14, 2016, and April 11, 2018, her claim for refund for 2013 is barred by the statute of limitations.

For 2014, appellant's claim for refund filed on May 15, 2019, is timely for payments made within one year, between May 15, 2018, and May 15, 2019. Appellant made payments totaling \$942.54 between April 11, 2018, and May 14, 2018 (non-refundable payments) and payments totaling \$1,993.37 between May 29, 2018, and December 14, 2018.

Because appellant filed her claim for refund on May 15, 2019, the claim for refund of the non-refundable payments is barred by the statute of limitations. Appellant filed her claim for refund within one year of the payments totaling \$1,993.37 that were remitted between May 29, 2018, and December 14, 2018. After deducting \$434.38 transferred to appellant's 2017 and 2018 taxable years, FTB refunded the balance of \$1,564.70, with interest, to appellant.³ Appellant's claim for refund of the non-refundable payments is barred by the statute of limitations. FTB properly limited the refund to payments made within one year of appellant's claim for refund filed on May 15, 2019.

Appellant asserts that she was going through a separation and thought that tax returns were being submitted until she started receiving collection notices from FTB. Appellant contends that FTB sent collections notices to her employer, and the post office box listed as appellant's address was incorrect. Appellant further claims that she tried to get tax refunds after filing her 2012 through 2018 tax returns by contacting FTB. Appellant asserts that FTB told her she would get a refund, but that FTB did not send her a letter until six months later.

None of appellant's arguments toll the statute of limitations. While miscommunications such as FTB's use of an incorrect address and FTB's failure to quickly respond to appellant's communications may be frustrating to appellant, those actions did not preclude appellant from filing her tax returns on time or filing her claims for refund prior to the expiration of the statute of limitations. As noted above, neither equitable grounds nor reasonable cause toll the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*)

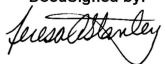
³ Payments of \$1,993.37 made between May 29, 2018, and December 14, 2018, minus \$434.38 transferred to other taxable years equals \$1,558.99. FTB refunded this amount plus allowed interest of \$5.71 to appellant for a total refund of \$1,564.70.

HOLDING

Appellant's claims for refund for taxable years 2012, 2013, and 2014 are barred by the statute of limitations.

DISPOSITION

FTB's actions denying appellant's claims for refund are sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/12/2024