

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. CISNEROS AND)
R. CISNEROS)
)
)
)

OTA Case No. 230613570

OPINION

Representing the Parties:

For Appellants: S. Cisneros
R. Cisneros

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Andrew Jacobson, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Cisneros and R. Cisneros (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,277 for the 2018 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether OTA has jurisdiction to hear and decide this appeal.

FACTUAL FINDINGS

1. Appellants did not timely file a California individual income tax return (return) for the 2018 tax year.
2. On June 1, 2021, FTB sent appellant S. Cisneros a Demand for Tax Return (Demand) requiring that she either file a 2018 return or explain why she did not have a California filing requirement by July 7, 2021. Appellant S. Cisneros did not timely respond to the Demand.

3. On July 30, 2021, FTB issued appellant S. Cisneros a Notice of Proposed Assessment (NPA), which estimated her income and proposed tax, a late-filing penalty, a demand penalty, a filing enforcement fee, and interest. The NPA stated that if appellant S. Cisneros chose to protest the proposed assessment, the protest must be submitted by September 28, 2021.
4. Appellant S. Cisneros did not protest the NPA and FTB's proposed assessment became due and collectible.
5. On April 7, 2023, appellants faxed to FTB a copy of their joint 2018 return which was self-prepared and unsigned (Unsigned 2018 Return). On the Unsigned 2018 Return, appellants reported total tax of \$2,628, claimed California income tax withholding of \$4,582, and claimed overpaid tax of \$1,954. A copy of a 2018 California Schedule W-2, *Wage and Tax Statement*, was attached to the Unsigned 2018 Return, showing that appellant R. Cisneros had California income tax of \$4,582 withheld by his employer. On May 8, 2023, FTB received in the mail a second copy of appellants' Unsigned 2018 Return, which was also self-prepared and unsigned.
6. FTB accepted appellants' Unsigned 2018 Return, which reported a tax liability of \$2,628. FTB withdrew its tax assessment, the late-filing penalty, and the filing enforcement fee. FTB reduced the demand penalty to \$657 and imposed a lien fee of \$20. After applying appellant R. Cisneros's California income tax withholding of \$4,582, FTB determined that there was an overpayment on appellants' 2018 tax year account of \$1,277 ($\$4,582 - \$2,628 - \$657 - \$20 = \$1,277$). FTB treated appellants' Unsigned 2018 Return as a claim for refund of \$1,277.
7. In a Statute of Limitations notice dated June 8, 2023, FTB denied appellants' claim for refund because the applicable statute of limitations had expired.
8. This timely appeal followed.

DISCUSSION

An administrative agency's authority to act is of limited jurisdiction and it "has no powers except such as the law of its creation has given it." (*Appeal of Moy*, 2019-OTA-057P; see also *Appeal of Eric H. Liljestrands Irrevocable Trust*, 2019-OTA-012P.) As relevant to this appeal, OTA has jurisdiction to hear and decide an appeal when FTB mails a notice of action on cancellation, credit or refund, or any other notice that denies any portion of a perfected claim for

refund of tax, penalties, fees, or interest. (Cal. Code Regs., tit. 18, § 30103(a)(3).)¹ Every claim for refund shall be in writing, shall be signed by the taxpayer or the taxpayer's authorized representative, and shall state the specific grounds on which it is founded. (R&TC, § 19322.) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Carr, Jr.*, 2022-OTA-157P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Carr, Jr.*, *supra.*)

Here, FTB asserts that both copies of the Unsigned 2018 Return are not valid claims for refund because appellants failed to sign either return. FTB also claims that appellants did not file a valid claim for refund before the statute of limitations expired, and therefore, it cannot refund their overpayment. OTA agrees that the copies of the Unsigned 2018 Return are not valid claims for refund because the returns are unsigned. While FTB issued a Statute of Limitations which purported to deny appellants' claim for refund, FTB's notice does not alter the reality that appellants did not file a valid claim for refund, and thus, the appeal rights to OTA provided by R&TC section 19324 and California Code of Regulations, title 18, section 30103(a)(3) are inapplicable. (See *Appeal of Reed*, 2021-OTA-326P.)

Appellants claim that they believed the 2018 return was previously filed in 2020 by a representative working on their account. Appellants also assert they did not find out that their return was not filed until a levy was activated. However, appellants provide no documentation or other evidence to support their claims. Therefore, appellants have failed to meet their burden to prove that they filed a valid claim for refund. Without a valid claim for refund, OTA lacks jurisdiction to hear and decide this appeal.

¹ OTA also has jurisdiction to hear and decide an appeal when FTB fails to act on a perfected claim for a refund of tax, penalties, fees, or interest within six months after the claim is filed with FTB. (Cal. Code Regs., tit. 18, § 30103(a)(4).) However, this regulation is inapplicable because, as described above, appellants never filed a valid claim for refund.

HOLDING

OTA lacks jurisdiction to hear and decide this appeal.

DISPOSITION

This appeal is dismissed for lack of jurisdiction.

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

We concur:

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Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Veronica Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 6/11/2024