

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
B. MENENDEZ) OTA Case No. 230112369
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OPINION

Representing the Parties:

For Appellant: Brett Silkstone

For Respondent: Joel M. Smith, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19331, B. Menendez (appellant) appeals respondent Franchise Tax Board’s (FTB) deemed denial of appellant’s claim for refund of \$37,279 for the 2018 tax year.¹

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

ISSUE

Whether appellant has shown that she is entitled to a claim of right credit under R&TC section 17049.

¹ FTB issued a claim denial letter indicating that it was disallowing appellant’s claim for refund in the amount of \$40,443.50, relating to the underpayment of estimated tax and late filing penalties. Appellant clarified that the only issue in dispute is her disallowed claim of right credit of \$37,279, which she claimed on her second 2018 amended return. Appellant does not dispute the imposition of the late filing penalty or the self-assessed estimated tax penalty, and this Opinion will not discuss these penalties further. FTB has not expressly taken action on appellant’s claim for refund relating to the claim of right credit in the amount \$37,279. As such, this will be treated as an appeal of FTB’s deemed denial of appellant’s claim for refund relating to the credit pursuant to R&TC section 19331.

FACTUAL FINDINGS

1. On November 15, 2019, appellant filed a California Resident Income Tax Return (Form 540) for the 2018 tax year, reporting total tax of \$535,023, total withholdings and payments of \$437,161 (including a claim of right credit of \$34,476), and tax due of \$97,862. Appellant self-assessed an underpayment of estimated tax penalty (estimated tax penalty) of \$9,431, resulting in a total amount due of \$107,293 (\$97,862 + \$9,431).
2. FTB processed appellant's 2018 return and issued a Notice of Tax Return Change – Revised Balance dated February 3, 2020, which stated that FTB changed appellant's 2018 return resulting in a revised balance due of \$182,619.41. The February 3, 2020 notice imposed a late filing penalty of \$33,084.50, plus interest, and did not include the claim of right credit.
3. On February 10, 2020, appellant filed an amended California return for the 2018 tax year, reporting total tax of \$531,019, total withholding and payments of \$437,161 (including a claim of right credit of \$34,476). Appellant reported a total amount due of \$103,289 consisting of tax of \$93,858 and an estimated tax penalty of \$9,431.
4. On March 6, 2020, appellant remitted a payment of \$137,511.53 to FTB.
5. FTB processed appellant's 2018 amended return and issued a Notice of Tax Return Change – Revised Balance dated June 3, 2020, which stated that FTB changed appellant's 2018 return resulting in a balance due of \$40,518.90. The June 3, 2020 notice indicated that FTB applied the March 6, 2020 payment; reduced the estimated tax penalty to \$8,360.00; imposed a reduced late filing penalty of \$32,083.50, plus interest; and again, did not include the claim of right credit. As explained above, appellant reported less total tax and tax due on the amended return than on the original return. The amount of the late filing penalty on the February 3, 2020 Notice of Tax Return Change – Revised Balance is \$33,084.50, whereas the amount of the late filing penalty on the June 3, 2020 Notice of Tax Return Change – Revised Balance is \$32,083.50.
6. FTB issued to appellant an Income Tax Due Notice dated August 3, 2020, a Final Notice Before Levy and Lien dated September 10, 2020, and an Intent to Offset Federal Payments dated November 18, 2020.

7. On April 6, 2021, appellant remitted a payment of \$42,297.63, which satisfied the balance due for the 2018 tax year. On April 21, 2021, FTB refunded \$419.31 because appellant overpaid the amount due.
8. On April 15, 2021, appellant filed a second amended return for the 2018 tax year, which revised the claim of right credit to \$37,279.²
9. In a letter to FTB dated April 21, 2021, appellant stated that she was claiming a claim of right credit of \$37,279 for tax year 2018 due to a repayment amount of \$280,289. Attached to her April 21, 2021 letter is a document entitled, “Calculation of Claim of Right,” which shows that under “Method B,” appellant calculated a tax benefit of \$37,279 for tax year 2018 for the repayment of salary received in 2017 in the amount of \$280,289.
10. On April 8, 2022, appellant filed a claim for refund in the amount of \$42,297.63. The claim for refund was filed on FTB Form 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund,³ and indicated that appellant was seeking a claim of right credit of \$37,279, and return of appellant’s April 6, 2022 payment of \$42,297.63 which appellant states was paid as a result of the credit not being credited or applied.
11. FTB sent appellant a claim denial letter dated December 29, 2022. FTB’s claim denial letter noted that FTB denied appellant’s refund claim in the amount of \$40,443.50, which is the sum of the estimated tax penalty of \$8,360.00, and the late filing penalty of \$32,083.50. The December 29, 2022 letter stated that appellant had not established reasonable cause for waiving these two penalties. The letter did not address appellant’s claim for refund relating to the claim of right credit claimed in the amount of \$37,279.
12. FTB has not responded to or taken action on appellant’s claim of right refund claim per the April 8, 2021 Form 2917; the claim for refund per the April 15, 2022 amended return reporting a revised claim of right credit; nor appellant’s April 21, 2021 explanation letter to FTB.

² The second amended return reported the same total tax (\$531,019), and estimated tax penalty (\$9,431) amounts as reported per appellant’s first amended return filed on February 10, 2020.

³ This form is usually used to request abatement (and refund) of penalties based on reasonable cause. This may be the reason FTB treated appellant’s claim for refund as a request for abatement of penalties only.

13. Appellant appealed the December 29, 2022 claim denial letter, which the Office of Tax Appeals (OTA) is treating as a deemed denial of appellant's claims for refund relating to the claim of right credit in the amount of \$37,279.

DISCUSSION

A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.) Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeals of Swat-Fame, Inc. et. al* 2020-OTA-046P.) Statutes granting tax credits are to be construed strictly against the taxpayer with any doubts resolved in FTB's favor. (*Ibid.*; *Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Thus, appellant bears the burden of showing that the claim of right credit requirements are satisfied.

Under Internal Revenue Code (IRC) section 1341, a taxpayer may assert a "claim of right" deduction or credit in the current tax year when he or she included an item of income in gross income in a prior tax year for which it appeared that the taxpayer had an unrestricted right to the item, and after the close of the prior tax year, it is established that the taxpayer did not have an unrestricted right to such item of income (or portion thereof). If the amount of the item exceeds \$3,000, IRC section 1341(a) permits the taxpayer to claim a deduction for the item in the current tax year or a credit in the current tax year equal to the amount of tax paid for the item in the prior tax year, whichever results in the least tax. A taxpayer is entitled to a deduction or credit under IRC section 1341 only if, among other things, the deduction is allowable under other provisions of the IRC. (*Kadillak v. Commissioner* (9th Cir. 2008) 534 F.3d 1197, 1202, citing Treas. Reg. § 1.1341(a)(1).)⁴

Like IRC section 1341, R&TC section 17049 permits the taxpayer to claim a deduction for the item in the current tax year or a credit in the current tax year equal to the amount of tax paid for the item in the prior tax year(s), whichever results in the lesser tax liability. (R&TC, § 17049(a), (b).) Here, appellant contends that she is entitled to a claim of right credit of \$37,279 related to a repayment in 2018 of salary in the amount of \$280,289 that she received in

⁴ R&TC, section 17049(g) expressly provides that the regulations promulgated by the IRS under IRC section 1341 shall apply, except to the extent that those regulations conflict with this section or other provisions of the R&TC.

2017 and included in her California adjusted gross income for tax year 2017. Appellant has not produced supporting documentation or other credible and competent evidence that establishes she repaid in 2018, the \$280,289 received during 2017 and reported on her 2017 California return.

In its brief, FTB requested that appellant provide evidence to support her claim of right credit, including but not limited to: 1) documentary proof that she repaid \$280,289 during 2018; 2) documentation that shows that the amount of \$280,289 was subject to repayment; and 3) a copy of relevant portions of her 2018 amended federal return claiming the additional claim of right credit or, if she did not file a 2018 amended federal return claiming the additional credit, an explanation for why she did not. Appellant had an opportunity to submit a reply brief but did not do so. Further, OTA independently gave appellant an opportunity to submit the same or similar supporting documentation in response to an additional briefing request. Appellant, however, did not respond to OTA's request. Accordingly, appellant has not proven that FTB erroneously denied her a claim of right credit under R&TC section 17049.

HOLDING

Appellant has not shown that she is entitled to a claim of right credit under R&TC section 17049.

DISPOSITION

FTB’s deemed denial of appellant's claim for refund is sustained.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 7/19/2024