

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240115100
A. MAJLESSI AND)
N. AZAR¹)
_____)

OPINION

Representing the Parties:

For Appellants: A. Majlessi
N. Azar

For Respondent: Bradley J. Coutinho, Attorney Supervisor

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Majlessi and N. Azar (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$9,427.87 for the 2017 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 the statute of limitations bars appellants’ claim for refund.

FACTUAL FINDINGS

1. Appellant A. Majlessi failed to timely file a 2017 California income tax return (return). Appellant A. Majlessi’s employer withheld California income tax on his behalf.
2. FTB subsequently issued appellant A. Majlessi a Notice of Proposed Assessment (NPA), which estimated appellant A. Majlessi’s income and proposed to assess additional tax, penalties, interest, and a filing enforcement cost recovery fee. When appellant A. Majlessi did not respond, the tax became due and collectible.

¹ N. Azar was formerly known as N. Mohammadi.

3. FTB later imposed the collection cost recovery fee and collected payments to satisfy appellant A. Majlessi's liability. On November 13, 2020, and February 22, 2021, FTB transferred \$1,585.18 from appellants' 2019 tax year account to their 2017 tax year account. Between June 8, 2020, and March 1, 2022, FTB collected \$7,781.76. Between November 21, 2023, and December 5, 2023, FTB collected payments of \$1,245.45.
4. FTB received appellants' joint return on December 5, 2023, which reported a larger amount of withholding and determined an overpayment of \$1,171. On December 19, 2023, FTB received a payment of \$622.23.
5. FTB processed the return, determined a larger overpayment of \$10,673.32, and treated the return as a claim for refund.
6. On December 26, 2023, FTB issued appellants a Statute of Limitations notice (Notice) which allowed a refund of \$1,245.25. The Notice denied appellants a refund of \$9,427.87 ($\$10,673.32 - \$1,245.45 = \$9,427.87$). On January 4, 2024, FTB also refunded appellants their \$622.23 payment.
7. Appellants timely appealed. On appeal, appellants provide a certified mail receipt dated September 30, 2017, as proof of mailing, and FTB provides correspondence it received on October 3, 2017, relating to another tax year.

DISCUSSION

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. Taxpayers have the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

If taxpayers place a return in a United States mailbox before the statutory filing deadline and there is no record of that return being received, taxpayers must offer evidence, such as a registered or certified mail receipt, that the return was timely filed. (Gov. Code, § 11003; Cal. Code Regs., tit. 18, § 30219(a).) Taxpayers have the burden of proving the date of the postmark or that the return was timely filed. (R&TC, § 21027(b) [treasury regulations under Internal Revenue Code (IRC) section 7502(c)(2) relating to prima facie evidence of delivery and the

postmark date for certified mail, as revised by Treasury Decision 8932 on January 10, 2001, are applicable to filings with FTB]; Treas. Reg. § 301.7502-1(c)(1)(iii), (c)(2); *Appeal of La Salle Hotel Co.* (66-SBE-071) 1966 WL 1412.) Here, appellants argue that they timely filed the return and provide a certified mailing receipt dated September 30, 2017. In response, FTB asserts that it has no record of receiving appellants' return, notes that the date of the certified mailing receipt is prior to the close of the 2017 tax year and is unlikely to be the return, and provides correspondence it received on October 3, 2017, which is related to the 2014 tax year.

On the record before OTA, this panel finds that appellants have not met their burden of proof to establish the date of the postmark or timely mailing. Appellants filed a calendar-year return. For individual taxpayers, calendar-year returns for the 2017 tax year closed on December 31, 2017, and were due on April 15, 2018. (See R&TC, § 18566.) Appellants have not explained why they filed a calendar-year return before the close of the taxable year and more than six months before it was due. Moreover, FTB provided correspondence from appellants received on October 3, 2017, related to the 2014 tax year. That correspondence is appellants' response to FTB's request to confirm a tax return filing for the 2014 tax year (request). The request instructs appellants to provide a written response to a certain ZIP code. The certified mailing receipt shows that appellants mailed a document to a ZIP code which matches the ZIP code of FTB's request. In other words, the certified mailing receipt corroborates appellants' correspondence regarding the 2014 tax year, rather than providing evidence of filing a return, which would be sent to a different ZIP code.

Concerning the four-year statute of limitations, appellants did not file their 2017 return on extension, so the four-year statute of limitations concerning the extended due date is inapplicable. The four-year statute of limitations beginning from the original due date of the return applies, and as described above, appellants' return was due on April 15, 2018; therefore, appellants had until April 15, 2022, to file their refund claim. However, appellants filed their refund claim on December 5, 2023, and thus, it was untimely under this four-year statute of limitations. Therefore, OTA finds no error in FTB's determination that appellants' claim for refund was untimely under the applicable four-year statute of limitations.

Appellants' claim for refund was also untimely under the one-year statute of limitations. Concerning income tax withholding made on behalf of appellants, income tax withholding is considered paid on the due date for the applicable return. (See R&TC, § 19002(c)(1).) The due

date for the return was April 15, 2018. Appellants' claim for refund was not filed within one year of April 15, 2018, and these payments cannot be refunded. Concerning the remaining payments, FTB refunded payments made between November 21, 2023, and December 5, 2023, and the payment made on December 19, 2023. Appellants' remaining payments were made on or before March 1, 2022, which was more than a year prior to December 5, 2023, and thus outside of the one-year statute of limitations period. Therefore, OTA finds no error in FTB's determinations under the one-year statute of limitations.

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Taxpayers' untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)²


² Appellants have not argued that any exception to the statute of limitations applies, such as R&TC section 19316, which suspends the statute of limitations for refunds claims where taxpayers show that they are "financially disabled," which is defined by R&TC section 19316 as where taxpayers are unable to manage their financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. OTA's review of the record does not indicate that this statutory exception applies here.

HOLDING

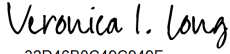
The statute of limitations bars appellants' claim for refund.

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

Date Issued: 8/26/2024