

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21119110
J. MITCHELL)
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OPINION

Representing the Parties:

For Appellant: J. Mitchell

For Respondent: Eric A. Yadao, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant J. Mitchell appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$1,026.03 for the 2015 tax year.

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

ISSUE

Whether appellant is entitled to his claimed refund for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2015 California resident income tax return.
2. Respondent subsequently received information from the IRS indicating that appellant’s federal adjusted gross income for the 2015 tax year was increased to account for previously omitted pension/annuity income. The IRS assessed additional tax on December 25, 2017.
3. On December 27, 2018, respondent issued a Notice of Proposed Assessment (NPA), proposing an additional tax of \$619.00 plus interest for appellant’s 2015 tax year. The

- NPA was sent to appellant's Prosper, Texas address listed on his 2017 California nonresident or part-year resident income tax return, which was filed on March 28, 2018.
4. Appellant did not protest the NPA, and therefore the assessment became final.
 5. Respondent thereafter issued a Notice of State Income Tax Due on March 25, 2019, to appellant's Chula Vista, California address listed on his 2018 California resident income tax return, which was filed on February 15, 2019. The notice listed a full balance due of \$692.91, including \$73.91 in interest. Respondent issued a second Income Tax Due Notice on May 8, 2019, listing a full balance due of \$697.10, including \$78.10 in interest. Both notices indicated that collection action may begin if the full balance due was not paid within 30 days of the notice dates.
 6. Since the balance due remained unpaid, respondent issued a Final Notice Before Levy or Lien on June 12, 2019, which was sent to appellant's Chula Vista, California address. The notice advised appellant that collection action would commence, without further notice, if the balance due of \$700.45, including applicable interest, was not paid in full within 30 days of the notice date.
 7. Having received no responses to prior notices, respondent issued an Earnings Withholding Order for Taxes (EWOT) to appellant's employer on July 30, 2019, with a copy to appellant at the Chula Vista address. The notice listed an amount due of \$1,022.08.
 8. On August 28, 2019, appellant contacted respondent by phone to discuss the EWOT received by his employer. On the same day, appellant paid the full balance due of \$1,026.03 for the 2015 tax year.
 9. On November 2, 2020, appellant filed a Reasonable Cause – Individual and Fiduciary Claim for Refund with respondent in the amount of \$1,026.03.
 10. Respondent acknowledged appellant's claim for refund in a letter dated June 3, 2021, and explained its position regarding the additional assessed tax and corresponding notices. Respondent requested a response within 30 days from the date of the letter; otherwise, appellant's claim for refund would be denied.
 11. By notice dated November 2, 2021, respondent denied appellant's claim for refund in full because it received no response.
 12. This timely appeal followed.

DISCUSSION

Appellant asserts that he was not aware that he owed additional tax and, upon discovering that tax was owed following issuance of the EWOT, promptly paid the outstanding liability. Appellant contends that respondent's employee indicated over the phone that he could get a refund of penalties and fees after payment. In an action for refund, the taxpayer has the burden of proof to show entitlement to a refund by a preponderance of the evidence. (*Appeal of Cornbleth*, 2019-OTA-408P; Cal. Code Regs., tit. 18, § 30219(a).)

The refund amount requested that is at issue here stems from respondent's deficiency assessment based on a federal determination by the IRS. A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) Before analyzing whether there was error in respondent's action based on the federal determination, there is a threshold question of whether appellant's claim for refund is barred by the statute of limitations. If the claim for refund is barred by statute, then respondent's action must be sustained, and an analysis of the underlying assessment and collection activity is unnecessary.

Respondent issued the NPA to appellant approximately one year after the IRS assessed additional tax at the federal level.¹ Appellant does not confirm whether he received the NPA, but he does argue that he was unaware of the additional tax owed until after collection activity occurred, suggesting that he may not have received the NPA and subsequent notices from respondent. During the phone call on August 28, 2019, respondent informed appellant that notices were mailed to the address listed on his account and that no communication had been received to indicate a change of address. To the extent that appellant did not receive the NPA or subsequent notices from respondent, the last-known address rule aids in determining whether the notices were nonetheless sufficient. (See R&TC, § 18416(b).) Since respondent issued the NPA and subsequent collection-related notices to the addresses listed on appellant's most recent

¹ If respondent is notified of federal adjustments within six months of the federal adjustments becoming final, it has two years to issue an NPA. (R&TC, § 19059.) If respondent is notified more than six months after the federal adjustments become final, it has four years to issue an NPA. (R&TC, § 19060.) The record does not make clear whether respondent was notified within six months of the federal adjustments becoming final, but respondent's NPA was issued within the shorter time limit, regardless, and was therefore timely.

California tax returns at the time, the notices are deemed sufficient, even if not ultimately received by appellant.² (R&TC, § 18416(c).)

Pursuant to R&TC section 19306(a), which provides the statutory period for filing a claim for refund, appellant had until one year after making the payment of \$1,026.03, on August 28, 2019, to file a claim for refund. That statutory period expired on August 28, 2020.³ Appellant filed a claim for refund just over two months after the applicable deadline on November 2, 2020, and appellant does not dispute that the claim was untimely.⁴ The language of the statute of limitations is strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period.⁵ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to the legal obligation. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Appellant mainly contends on appeal that he was verbally told by respondent's representative that he could receive "the penalty and fees" back once his payment processed, and that he did not receive a letter or email regarding next steps.⁶ However, because appellant did not timely file his claim for refund within the applicable statute of limitations, respondent properly denied appellant's full claim for refund for the 2015 tax year, including the imposed collection cost recovery fee and accrued statutory interest for that year.

² Respondent issued the NPA in December 2018 to the address listed on appellant's return filed March 28, 2018. Subsequent notices were issued in March and June 2019 to the address listed on appellant's return filed February 2019.

³ R&TC section 19306(a) alternatively provides a four-year statute of limitations based on the filing date of the return or filing due date of the return, depending on the facts; however, that statute of limitations expired in April 2020, earlier than the one-year statute of limitations. Therefore, the one-year statute of limitations controls.

⁴ R&TC section 19311 provides an alternative statute of limitations for filing a claim for refund when there is a federal determination; however, that two-year statute of limitations expired in 2019, two years after the federal determination was made on December 25, 2017. Accordingly, the one-year statute of limitations discussed above controls.

⁵ R&TC section 19316 provides a narrow exception for suspending the statute of limitations where a taxpayer is "unable to manage personal 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." (R&TC, § 19316(b)(1).) That exception does not apply under the facts here.

⁶ Appellant refers to a "penalty," but respondent did not assess a penalty for the tax year at issue. Appellant's payment of \$1,026.03 to respondent on August 28, 2019, is comprised of additional tax of \$619.00, a collection cost recovery fee of \$317.00, and interest of \$90.03.

HOLDING

Appellant’s claim for refund for the 2015 tax year is barred by the statute of limitations.

DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Teresa A Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 11/1/2024