

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
R. WELLS) OTA Case No. 240716775
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OPINION

Representing the Parties:

For Appellant: R. Wells
For Respondent: Arathi Ramalingam, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Wells (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,682.71 for the 2012 tax 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 panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).)

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether the statute of limitations bars appellant’s claim for refund for the 2012 tax year.

FACTUAL FINDINGS

1. Appellant did not file a timely 2012 California Resident Income Tax Return (return).
2. FTB obtained information indicating that appellant received income sufficient to prompt a filing requirement for the 2012 tax year but had not filed a return. FTB issued appellant a Demand for Tax Return for the 2012 tax year, but appellant did not respond.
3. On April 21, 2014, FTB issued appellant a Notice of Proposed Assessment (NPA), which estimated appellant’s taxable income based on miscellaneous income reported to FTB, and proposed to assess tax, penalties, a filing enforcement fee, and interest.

4. Appellant failed to timely protest the NPA, which went final, and so the liabilities became due and collectible. Between October 15, 2018, and December 15, 2020, FTB collected payments totaling \$4,682.71.
5. On May 15, 2024, appellant filed a return which reported zero total tax.
6. FTB processed appellant's return, abated applicable penalties and the filing enforcement fee, and treated the return as a claim for refund for the 2012 tax year.
7. In a Statute of Limitations notice dated June 27, 2024, FTB informed appellant that it determined that appellant had an overpayment of \$4,682.71 on the 2012 tax year account but denied a refund of the amount because the statute of limitations expired.
8. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

On appeal, appellant claims that H&R Block prepared appellant's taxes in 2015 and failed to send the state return to FTB. Appellant also provides a copy of the 2012 return, dated March 21, 2015. Appellant appears to claim that the 2012 return was filed in 2015.

If a taxpayer files a return before the statutory filing deadline and the return is received late, the taxpayer must offer evidence that the return was timely filed, such as a registered or certified mail receipt. (Gov. Code, § 11003; Internal Revenue Code (IRC), § 7502; R&TC, § 21027; *Appeal of Fisher*, 2022-OTA-337P.) The taxpayer assumes "the risk that the postmark will bear a date on or before the last date . . . prescribed for filing the [return]," and have the burden of proving the date of the postmark or that the return was timely mailed. (Treas. Reg.

§ 301.7502-1(c)(1)(iii).) R&TC section 21027 provides that Treasury Regulation section 301.7502-1, as revised on January 10, 2001, shall be applicable to FTB filings.¹

Appellant fails to satisfy the burden of proving that the 2012 return was filed before the expiration of the statute of limitations because appellant provides no evidence, such as a registered or certified mailing receipt, or an electronic filing confirmation. There are also discrepancies between the copy of the 2012 return appellant provides and the copy of the 2012 return in FTB's records. Appellant's copy does not bear the paid preparer's signature and FTB's copy does not bear a March 21, 2015 signature date. Appellant fails to meet the burden of proof to show, by a preponderance of the evidence, that the 2012 return was filed on March 21, 2015. (*Appeal of Gillespie, supra.*) Based on the record before OTA, the 2012 return was filed on May 15, 2024.

FTB treated the 2012 return, which was untimely filed on May 15, 2024, as a claim for refund. Since the return was untimely, the applicable four-year statute of limitations period for appellant's 2012 refund claim runs from the original due date of the return, April 15, 2013, and expired on April 15, 2017, four years later. (See R&TC, § 18566.) Thus, the applicable four-year statute of limitations period expired before appellant filed the claim.

The one-year statute of limitations period runs one year from the date of the refund claim. Appellant filed the refund claim on May 15, 2024. FTB collected payments between October 15, 2018, and December 15, 2020. Thus, appellant's overpayments were outside of the one-year statute of limitations and FTB is barred from refunding or crediting the payments.

Appellant asserts that the IRS discovered there was identity theft in the 2012 tax year and told appellant not to do anything, including filing a return, until it determined who stole appellant's identity, and that FTB unfairly garnished appellant's income.²

However, the language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth, 2019-OTA-408P.*) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P., 2020-OTA-144P.*) There is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the

¹ Effective January 1, 2002, California amended R&TC section 21027 to add subdivisions (a)(2) and (b) to conform with specific provisions in IRC section 7502 regarding "designated delivery service" and "electronic filing." Aside from those specific provisions, R&TC section 21027 does not conform to IRC section 7502 in its entirety. (See R&TC, § 21027, as amended by Stats. 2001, ch. 543 (SB 1185), § 20, West's Cal. Legis. Service.)

² At the prehearing conference for this appeal, appellant discussed an account record, a letter or correspondence with FTB, and information or correspondence regarding identity theft for the 2012 tax year. However, appellant did not submit the information and subsequently waived an oral hearing.


tax was not owed in the first instance. (*Ibid.*; see *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Appeal of Cornbleth, supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) Accordingly, appellant's claim for refund is barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant's claim for refund for the 2012 tax year.

DISPOSITION

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

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

Date Issued: 5/23/2025