

FACTUAL FINDINGS2007 Tax Year

1. FTB requested, but did not timely receive, an income tax return for the 2007 tax year from appellants.
2. Consequently, FTB issued a Notice of Proposed Assessment (NPA) to K. Thoulion, in which FTB assessed tax based on an estimate of his income and imposed a late filing penalty for a total of \$3,021.25, plus interest.
3. FTB also issued an NPA to T. Thoulion, in which FTB assessed tax based on an estimate of her income, and imposed a late filing penalty, for a total of \$6,055 plus interest.
4. Based on the NPAs, appellants' combined outstanding liability for tax year 2007 totaled \$9,076.25, plus interest.
5. FTB then pursued collection action until all balances for the 2007 tax year were satisfied on December 5, 2019.
6. FTB imposed a collection cost fee of \$217 and a lien fee of \$31 on appellants' 2007 tax year account.
7. On August 26, 2022, appellants untimely filed a joint 2007 tax return reporting zero total tax and payments.
8. FTB processed appellants' 2007 tax return and computed an overpayment of \$12,860.55. However, in a Statute of Limitations notice, FTB explained that it did not credit or refund this amount to appellants because it determined that appellants' 2007 tax return had been filed outside the limitation period for making a refund claim.

2009 Tax Year

9. FTB issued a demand for, but did not timely receive, a tax return for the 2009 tax year from K. Thoulion.
10. FTB also issued a demand for, but did not timely receive, a tax return for the 2009 tax year from T. Thoulion.
11. Consequently, FTB issued an NPA to K. Thoulion, in which FTB assessed tax based on an estimate of his income, and imposed late filing, and demand penalties, and a filing enforcement fee, for a total of \$570 plus interest.
12. FTB also issued an NPA to T. Thoulion, in which FTB assessed tax based on an estimate of her income, and imposed late filing and demand penalties, and a filing enforcement fee, for a total of \$1,459 plus interest.

13. Based on the NPAs, appellants' combined outstanding liability for tax year 2009 totaled \$2,029, plus interest.
14. FTB then pursued collection action until all balances for the 2009 tax year were satisfied on June 5, 2020.
15. On August 26, 2022, appellants untimely filed a joint 2009 Return reporting zero total tax and payments.
16. FTB processed appellants' 2009 tax return and computed an overpayment of \$2,635.52. However, in a Statute of Limitations notice, FTB explained that it did not credit or refund this amount to appellants because it determined that appellants' 2009 tax return had been filed outside the limitation period for making a refund claim.
17. This timely appeal followed.

DISCUSSION

Generally, no credit or refund is allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if filed within the extended filing period; (2) four years from the due date of the return, without regard to filing extensions; or (3) one year from the date of the overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof to establish entitlement to a refund and that the refund claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Appellants do not dispute that their 2007 and 2009 tax returns were filed after the statute of limitations for making a refund claim had expired. Appellants instead request that their overpayments for these years be credited to their 2018 through 2021 tax year accounts.

The statute of limitations for requesting a credit is the same as that for requesting a refund. (R&TC, § 19306(a).) Appellants' untimely claims therefore bar not only a refund of their overpayment for the years at issue but also prevent FTB from crediting appellants' overpayment to another tax year account. The statute of limitations for filing a claim for credit or refund must be strictly construed, meaning that except in very limited situations, which are not present here,² a taxpayer's untimely filing of a claim for *any reason* bars a refund. (*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. (*Appeal of*

² For instance, R&TC section 19316 suspends the statute of limitations for periods where the taxpayer is unable to manage his or her 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.

Benemi Partners, L.P., supra.) This is true even when it is later shown that the tax was not owed in the first place (*U.S. v. Dalm* (1990) 494 U.S. 596, 602). The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to the legal obligation. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) Without timely credit or refund claims, appellants' request that their overpayments be credited to other tax years is barred by the statute of limitations.

HOLDING

Appellants are not entitled to a credit of their overpayment for the 2007 and 2009 tax years.

DISPOSITION

FTB's actions denying appellant's claims for refund are sustained.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

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