

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

D. SHMUELI) OTA Case No. 18042898
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)**OPINION**

Representing the Parties:

For Appellant:

D. Shmueli

For Respondent:

Mira Patel, Tax Counsel

For Office of Tax Appeals:

Andrea Long, Tax Counsel

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Shmueli (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$124 for the 2011 tax year and \$3 for the 2012 tax year.

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

ISSUE

Whether the statute of limitations bars appellant's claims for refund for the 2011 and 2012 tax years.

FACTUAL FINDINGS

1. On June 12, 2017, appellant filed his 2011 and 2012 California Resident Income Tax Returns (Forms 540), using the single filing status. For 2011, appellant reported an overpayment of \$124. For 2012, appellant reported an overpayment of \$3.
2. FTB accepted appellant's 2011 and 2012 returns as filed but did not refund the claimed overpayment amounts of \$124 and \$3 for 2011 and 2012, respectively, due to the expiration of the statute of limitations for claiming a refund.

3. Appellant subsequently submitted separate Reasonable Cause – Individual and Fiduciary Claims for Refund (FTB Forms 2917) dated November 21, 2017, for 2011 and 2012 for a refund of \$124 and \$3, respectively.
4. In separate letters dated December 29, 2017, FTB denied appellant’s claims for refund because the applicable statute of limitations had expired for both tax years.
5. This timely appeal followed.
6. Included in its brief, FTB attached the 2011 and 2012 tax year current records displays, which indicate that appellant made overpayments on April 15, 2012, and April 15, 2013, for the 2011 and 2012 tax years, respectively.

DISCUSSION

As a general matter, when it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law or Corporation Tax Law, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, §§ 19301, 19302.) Appellant has the burden of proof to show that he is entitled to a refund.¹ (*Appeal of Estate of Gillespie* 2018-OTA-052P.)² The law imposes time limits and other requirements on making and filing a claim for refund of taxes paid. (See R&TC, §§ 19306-19322.1.) Therefore, our analysis begins with whether a claim for refund is timely. (*Appeal of Estate of Gillespie, supra.*)

R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to R&TC section 18567 or 18604 (whichever is applicable); (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. Under certain circumstances, a return filed within the statute of limitations period set forth in R&TC section 19306(a), which shows a credit for tax withholdings or estimated tax payments, may be treated as a timely refund claim for the excess amount. (R&TC, § 19307.) A taxpayer’s failure to file a claim for refund, for whatever reason,

¹ California Code of Regulations, title 18, section 30219(c) states that unless there is an exception provided by law, “the burden of proof requires proof by a preponderance of the evidence.”

² Precedential decisions of the Office of Tax Appeals (OTA) may be found on OTA’s website at: <<https://ota.ca.gov/opinions>>.

within the statutory period bars him from doing so at a later date. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.)

One way to file a claim for refund is by filing a California tax return that establishes that the tax liability is less than the total payments credited to a taxpayer's account for that tax year. (R&TC, § 19307.) Appellant's return for 2011 was due on April 15, 2012, making the claim for refund due on or before April 15, 2016, to be timely. Appellant's return for 2012 was due on April 15, 2013, making the claim for refund due on or before April 15, 2017, to be timely. Appellant did not file his 2011 and 2012 returns until June 12, 2017, one year after the refund claim deadline for the 2011 tax year, and two months after the refund claim deadline for the 2012 tax year. Thus, appellant did not file the claims for refund timely to satisfy the four-year statute of limitations for both 2011 and 2012.

Because appellant did not timely file his returns, only payments made within one year from the date of overpayment fall within the statute of limitations set forth in R&TC section 19306(a). For the 2011 tax year, appellant's tax withholdings of \$139 were effectively paid on April 15, 2012, and a timely claim for refund therefore had to have been filed by no later than April 15, 2013. For the 2012 tax year, appellant's tax withholdings of \$857 were effectively paid on April 15, 2013, and a timely claim for refund therefore had to have been filed by no later than April 15, 2014. Appellant filed his 2011 and 2012 claims for refund on June 12, 2017, beyond all allowable time periods under the statute.

Appellant acknowledges that he did not file his returns until 2017, but contends that he faced extreme circumstances. In each claim for refund, appellant indicated that he did not have access to the information needed to file his returns. Appellant explained that he has been separated from his spouse since February 1, 2012, and he was not given access to information he needed to file complete and accurate 2011 and 2012 returns. Appellant contends that he could not file them earlier because his ex-wife held his tax documents hostage during the four years related to his contentious divorce. Appellant states that once he was finally provided with the tax documents related to the 2011 and 2012 tax years in May 2017, he immediately had his certified public accountant file the returns.

While we are sympathetic to appellant's situation, these allegations do not toll the statute of limitations period.³ Courts have recognized that fixed deadlines can lead to harsh results. However, federal courts have held that the occasional harsh result of fixed deadlines is redeemed by the clarity imparted by such certainty. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].) As such, without a timely refund claim, FTB does not have the statutory authority to refund amounts paid, and OTA does not have the statutory authority to require FTB to do so.

Appellant also contends that he relied on the oral statement of an FTB employee that his claim would be processed once he filed an appeal with OTA. While the statute of limitations must be strictly construed, in certain circumstances, FTB may be estopped from relying on the statute of limitations to deny a refund claim "where the agency's erroneous advice has induced the claimant to delay filing until after the limitations period has expired." (*Appeal of Wheat* (83-SBE-150) 1983 WL 15535.) Equitable estoppel may be raised as a defense against the government only in rare and unusual circumstances and when its application is necessary to prevent manifest injustice. (See *Appeal of Smith* (91-SBE-005) 1991 WL 280345.) To establish equitable estoppel, appellant must show the following: (1) FTB was aware of the facts; (2) FTB intended that appellant would rely on its conduct; (3) appellant was ignorant of the true state of facts; and (4) appellant relied upon FTB's conduct to his detriment. (See *Appeal of Campbell* (79-SBE-035) 1979 WL 4076.) Appellant has the burden of proving the elements of equitable estoppel. (*Ibid.*)

Here, appellant has not shown that he lost the right to a refund due to incorrect information provided by FTB. As of April 15, 2016, and April 16, 2017, the applicable four-year statute of limitations for both 2011 and 2012 had already expired, and thus, the purported reassurance from FTB on February 22, 2018, had no effect on appellant's right to a refund. Moreover, we note that alleged oral advice by one of FTB's employees does not generally give rise to an equitable estoppel claim. (*Appeal of Western Colorprint* (78-SBE-071) 1978 WL 3544.) Therefore, the doctrine of equitable estoppel does not apply in these circumstances.

³ While the statute of limitations may be tolled when a taxpayer shows that he is "financially disabled," appellant has provided no facts to support a disability argument. (R&TC, § 19316(a).)

Based on the foregoing, appellant's claims for refund for 2011 and 2012 are barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant's claims for refund for 2011 and 2012.

DISPOSITION

FTB's actions in denying appellant's claims for refund for 2011 and 2012 are sustained in full.

DocuSigned by:

Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

We concur:

DocuSigned by:

Jeff Angeja

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Jeffrey G. Angeja

Administrative Law Judge

DocuSigned by:

Linda C. Cheng

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Linda C. Cheng

Administrative Law Judge

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