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BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**HEARING SUMMARY**
	PERSONAL INCOME TAX APPEAL
NOE SITAN SICAJAN[1]	Case No. 678105

Years	Claims For Refund
2003	$13,737.45
2004	$20,211.95

Representing the Parties:

For Appellant: Noe Sitan Sicajan

For Franchise Tax Board: Sean Sullivan, Tax Counsel III

QUESTION: Whether the Franchise Tax Board (FTB or respondent) properly determined that appellant's claims for refund for tax years 2003 and 2004 are barred by the statute of limitations.

HEARING SUMMARY

Background

Appellant did not file a timely 2003 or 2004 California income tax return. Having

[1] Appellant resides in Alameda County.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

received information from reporting sources that appellant received sufficient income to trigger the filing requirements,[2] the FTB issued a notice demanding that appellant file a return or explain why no return was required for each appeal year. The FTB sent the demand notice for tax year 2003 on February 14, 2005, demanding that appellant respond by filing a return or by explaining why no return was required by March 16, 2005. For tax year 2004, the FTB sent the demand notice on December 27, 2005, demanding that appellant respond by filing a return or by explaining why no return was required by February 1, 2006. (Resp. Opening Br., p. 1, exhibits A, B and C.)

When appellant neither filed a return nor demonstrated why a return was not required for either tax year, the FTB issued a Notice of Proposed Assessment (NPA) for tax year 2003 on May 16, 2005, and an NPA for tax year 2004 on March 6, 2006. For tax year 2003, the NPA sets forth California taxable income of $113,463.00, a tax liability of $8,554.00, a late filing penalty of $2,138.50, a notice and demand penalty of $2,138.50, and a filing enforcement fee of $90.00. For tax year 2004, the NPA sets forth California taxable income of $139,668, a tax liability of $10,940, a late filing penalty of $2,735, a notice and demand penalty of $2,735, and a filing enforcement fee of $120. The FTB included applicable interest on both NPAs. Appellant did not protest the 2003 NPA or the 2004 NPA, and both proposed assessments became final. (Resp. Opening Br., p. 1, exhibits B and C.)

The FTB commenced collection action. For tax year 2003, the FTB received and applied two payments: $13,568.10 (paid on September 15, 2005), and $169.35 (paid on April 15, 2008). For tax year 2004, the FTB received and applied three payments: $14,019.83 (paid on April 15, 2008), $4,927.97 (paid on July 31, 2008), and $1,264.15 (paid on October 20, 2008). These payments satisfied appellant's outstanding 2003 and 2004 tax liabilities. (Resp. Opening Br., p. 1, exhibit D.)

Appellant filed his 2003 and 2004 California income tax returns on April 15, 2011, which the FTB treated as claims for refund. Appellant reported for both tax years a California adjusted gross income (AGI) of zero, an amount of tax due of zero, and an amount owed of zero. The FTB accepted the returns as filed and adjusted appellant's account accordingly. The FTB issued notices denying

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[2] For 2003, appellant's estimated income of $116,533 is based on federal Form 1099s and/or W-2 G (or other applicable state forms), which show that appellant received income of $116,533 from S&Y Corporation. For 2004, appellant's estimated income of $142,833 is based on federal Form 1099s and/or W-2 G (or other applicable state forms), which show that appellant received income of $142,833 from S&Y Corporation.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

appellant's claims for refund for both years because the claims were not timely filed. This timely appeal followed. (Resp. Opening Br., pp. 1-2; Appeal Letter, attachment.)

Contentions

Appellant asserts that his AGI for 2003 and 2004 was insufficient to trigger a filing requirement for either year. Appellant contends that, even though he was not required to, he filed his 2003 and 2004 California tax returns because the FTB requested he file the returns. In his reply brief, appellant argues that the claims for refund are informal claims for refund pursuant to Revenue and Taxation Code (R&TC) section 19322.1 and that the statute of limitations period was tolled until the perfection of the claims. (Appeal Letter, p. 1, attachments; App. Reply Br., p. 1.)

The FTB contends that appellant's claims for refund, which were received on April 15, 2011, are barred by both the four-year and the one-year statutes of limitations. The FTB argues that the four-year statute of limitations expires four years from the due date of a return; therefore, for the 2003 tax year, the four-year statute of limitations expired on April 15, 2008, and, for the 2004 tax year, the four-year statute of limitations expired on April 15, 2009. Regarding the one-year statute of limitations, the FTB asserts that the one-year statute of limitations for the most recent payment of $1,264.15 (paid on October 20, 2008 for tax year 2004), expired on October 15, 2009,[3] more than one year before appellant filed his refund claims. The FTB contends that the law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances. The FTB asserts that a taxpayer's failure to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date, even when, as is the case here, it is later shown that the tax was not owed in the first place. (Citing *United States v. Dalm* (1990) 494 U.S. 596, 602.) (Resp. Opening Br., pp. 2-4.)

Concerning appellant's contention that he did not have a filing requirement for the 2003 or 2004 tax years, the FTB asserts that R&TC section 18501 only specifies the circumstances when a return must be filed, and does not state that a return need not be filed if income is below the threshold amounts. The FTB states that, when appellant failed to file a return for tax years 2003 or 2004, the FTB,

[3] We note that, while the FTB indicated in its opening brief that the one-year statute of limitations expired on October 15, 2009, the correct one-year expiration date is October 20, 2009 (one-year from the October 20, 2008 payment).

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

pursuant to R&TC 19087, issued demand notices based on income information which indicated that appellant received sufficient income during 2003 and 2004 to trigger the filing requirement. The FTB notes that, when appellant did not respond to either notice, or protest the NPAs, the proposed tax liabilities and penalties became final. (Resp. Opening Br., p. 2.)

Applicable Law

The general statute of limitations for filing a refund claim is set forth in R&TC section 19306. The statute provides that the last day to file a claim for refund is the later of: four years from the date the return was filed, if filed within the extended due date under R&TC section 18567; four years from the due date of the return, without regard to extensions; or one year from the date of the overpayment. (Rev. & Tax. Code, § 19306, subd. (a).)

R&TC section 19322.1 provides for an informal claim for refund which tolls the statute of limitation time periods set forth in R&TC 19306. The informal claim is perfected and deemed filed on the date that the full payment of tax is made. However, the informal claim must be made before the payment of the entire tax has been paid and before the statute of limitations time periods set forth in R&TC section 19306 expire.

The language of the statute of limitations is explicit and does not provide exceptions. (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) Further, the statute of limitations is "strictly construed and . . . a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date." (*Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.) It is a taxpayer's responsibility to file a claim for refund within the timeframe prescribed by law. (*Id.*) This is true even when it is later shown that the tax was not owed in the first place. (*United States v. Dalm, supra*, 494 U.S. 596, 602.) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].) Federal courts have also stated that there is no equitable tolling of the statute of limitations. (*United States v. Brockamp* (1997) 117 S.Ct. 849.)

R&TC section 19316 contains an exception to the statute of limitations under California

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

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law. R&TC section 19316 tolls the statute of limitations during a period of "financial disability." A taxpayer is "financially disabled" if he is unable to manage his or her financial affairs due to a medically-determinable physical or mental impairment that is expected to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd. (b)(1).)

STAFF COMMENTS

The original due date for appellant's California 2003 tax return was April 15, 2004, such that the four-year statute of limitations expired on April 15, 2008. Appellant's last payment for the 2003 tax year was made on April 15, 2008; therefore, the one-year statute of limitations for a claim for refund expired on April 15, 2009. Appellant did not file a refund claim by these deadlines.

The original due date for appellant's California 2004 tax return was April 15, 2005, such that the four-year statute of limitations expired on April 15, 2009. Appellant's last payment for the 2004 tax year was made on October 20, 2008; therefore, the one-year statute of limitations for a claim for refund expired on October 20, 2009. Appellant did not file a refund claim by these deadlines.

As appellant filed his claims for refund for 2003 and 2004 on April 15, 2011, the statute of limitations apparently expired for the tax years at issue. Appellant appears to contend that the statute of limitations to file a claim of refund for both tax years should have been tolled under R&TC section 19322.1. For an informal claim of refund to toll a statute of limitations time period under R&TC section 19322.1, the informal claim must be made before the payment of the entire tax has been paid and before the statute of limitation time periods set forth in R&TC section 19306 expire. Here, it appears that appellant filed his claims for refund for tax years 2003 and 2004 after the entire tax had been paid and after the statute of limitations to file a claim for refund expired. Therefore, it appears that appellant did not properly file an informal claim for refund under R&TC section 19322.1 for either 2003 or 2004 and that the statute of limitations time periods were not tolled for either tax year.

In addition, appellant has not yet provided any evidence to show that he was unable to manage his financial affairs due to a medically-determinable physical or mental impairment to establish that a "financial disability" under which R&TC section 19316 may act to toll the statute of limitations. At the hearing, appellant should be prepared to explain how his claims for refund for both tax years were

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filed within the statute of limitations.

Pursuant to California Code of Regulations, title 18, section 5523.6, if either party has any additional evidence to present, it should be provided to the Board's Board Proceedings Division at least 14 days prior to the oral hearing.[4]

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[4] Evidence exhibits should be sent to: Khaaliq Abd'Allah, Associate Governmental Program Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.

STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL