

9. Taxpayers appealed the Notice of Action to the California State Board of Equalization.
10. The California State Board of Equalization affirmed the assessment by decision dated September 20, 2011 holding that Taxpayers were taxable on all income from whatever source derived and Taxpayers were not entitled to a credit for the taxes paid to Arizona because Arizona allows a credit for the taxes paid to California.
11. Taxpayers filed an amended return with the Department on January 12, 2012 claiming a credit for taxes paid to California and requesting a refund of \$[REDACTED].
12. The Section denied Taxpayers' claim for refund as untimely by letter dated January 19, 2012.
13. Taxpayers protested the refund denial.
14. Taxpayers contend the refund claim was timely filed because it was filed shortly after California denied their credit and said Taxpayers would have to take the credit with Arizona.
15. Taxpayers had not contacted the Department prior to filing the amended return and the Department was not aware of the California assessment before that date.

CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 42-1106.A requires that claims for credit or refund be filed within the period within which the department may make an assessment.
2. The department may make an assessment of additional tax due within four years after the report or return is required to be filed or within four years after the report or return is filed, whichever period expires later. A.R.S. § 42-1104.A.

3. Calendar year returns are required to be filed on or before the fifteenth day of April following the close of the calendar year. A.R.S. § 43-325.
4. The due date for Taxpayers' 2006 Arizona return was Monday, April 16, 2007.
5. Taxpayers' amended return for claiming an additional refund of tax for tax year 2006 was required to be filed on or before Monday, April 18, 2011.
6. Taxpayers' amended return for tax year 2006 was filed on January 12, 2012 and was therefore untimely.¹
7. The failure to begin an action for refund or credit within the time specified in A.R.S. § 42-1106 is a bar against the recovery of taxes by the taxpayer. A.R.S. § 42-1106.D.
8. The department has no obligation to refund taxes it knows have been overpaid if a timely refund claim is not presented. *McNutt v. Ariz. Dep't of Revenue*, 196 Ariz. 255, 995 P.2d 691 (App.1998).
9. A tax refund claim not filed within limitations period cannot be maintained, regardless of whether the tax is alleged to have been erroneously, illegally or wrongfully collected. *U.S. v. Dalm*, 494 U.S. 596, 110 S.Ct. 1361 (1990).
10. Taxpayers were not entitled to a refund of taxes paid for tax year 2006.
11. Taxpayers' protest is denied and the Section's denial of Taxpayers' claim for refund for tax year 2006 is affirmed.

DISCUSSION

Taxpayers were California residents who owned property in Arizona. Taxpayers sold the property in 2006, timely reported the gain on the sale and paid Arizona taxes that were due on the sale. Taxpayers also filed a timely California resident income tax return and subtracted the capital gain from the sale of the Arizona property.

¹ Taxpayers' protest letter to the Department stated that the amended return was filed on November 4, 2011. The amended return was dated November 4, 2011 by the preparer. The Section testified that the return was filed with the Department on January 12, 2012. Both dates are after the four year statute of limitations had expired.

California audited Taxpayers and disallowed the subtraction because residents of California were subject to California income tax from all sources. Taxpayers protested the California assessment. On May 27, 2010 the California Franchise Tax Board issued a Notice of Action affirming the additional assessment. The Notice of Action stated that since Arizona allows a credit for taxes paid to California, Taxpayers would have to take the credit with Arizona. At that time the Arizona refund statute of limitations was still open.

Taxpayers appealed the Notice of Action to the California State Board of Equalization. The California State Board of Equalization did not affirm the assessment until September 20, 2011 by which time the Arizona refund statute of limitations had closed. Taxpayers filed an amended return with the Department on January 12, 2012 claiming a credit for taxes paid to California and requesting a refund of \$[REDACTED].

The Section denied Taxpayers' claim for refund because it was filed after the statute of limitations had expired. Taxpayers protested contending the refund claim was timely because it was filed shortly after California denied their credit and said Taxpayers would have to take the credit with Arizona.

Taxpayers had not contacted the Department prior to filing the amended return and the Department was not aware of the California assessment before that date. Even if the Department were aware of the California assessment before the statute of limitations expired, the department had no obligation to refund taxes if a timely refund claim is not presented. *McNutt v. Ariz. Dep't of Revenue, supra*.

Because Taxpayers' claim was outside the statute of limitations the Section has no authority to refund taxes that had been overpaid. The Section's denial of Taxpayers' refund request submitted January 12, 2012 is affirmed.

DATED this 19th day of July, 2013.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section