

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042997
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JOSEPH A. VENTURA) Date Issued: January 30, 2019
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OPINION

Representing the Parties:

For Appellant: Joseph A. Ventura

For Respondent: David Gemmingen, Tax Counsel IV

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ Joseph A. Ventura (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying his claims for refund of \$653.58 and \$1,204.68 for the 2011 and 2012 tax years, respectively.

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Whether appellant’s claims for refund are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant is a United States veteran who served in the U.S. Navy in Vietnam during 1972 and 1973. Appellant timely filed a 2011 California tax return on April 15, 2012, and timely filed a 2012 tax return on April 15, 2013. Appellant’s last income tax payment for taxable year 2011 was made on October 4, 2012, and the last payment for the 2012 taxable year was made on December 17, 2013.

¹ Unless otherwise indicated, all “section” or “§” references are to sections of the California Revenue and Taxation Code.

2. By letter dated March 28, 2017, the U.S. Department of Veterans Affairs advised appellant that his disability rating with the Department of Veterans Affairs was being increased, retroactive to the 2011 calendar year.
3. By letter dated July 11, 2017, the U.S. Navy review board informed appellant that he was entitled to nontaxable Combat-Related Special Compensation, retroactive to the 2011 calendar year.² On November 14, 2017, appellant was informed by the military that he was entitled to retroactive payment of nontaxable funds for years 2011 through 2015.
4. Appellant filed amended tax returns claiming refunds for the 2011 and 2012 tax years on July 15, 2017, and September 29, 2017, respectively.
5. FTB denied the claims for refund, and this timely appeal followed.

DISCUSSION

The FTB's determination is presumed correct when it is found to be reasonable and rational, and an appellant has the burden of proving it to be wrong. (*Todd v. McColgan* (1949 89 Cal.App.2d 509; *Appeal of Myers*, 2001-SBE-001, May 31, 2001).)³ The general statute of limitations for filing a refund claim is set forth in section 19306(a). Under that statute, the last day to file a claim for refund is the later of: 1) four years from the date the return was filed, if filed within the extended due date; 2) four years from the due date of the return, without regard to extensions; or 3) one year from the date of the overpayment. (§19306(a).)

It is well-settled that the statute of limitations on claims for refund is explicit and must be strictly construed, without exception. (*Appeal of Meek*, 2006-SBE-001, Mar. 28, 2006; *Appeal of Avril*, 78-SBE-072, Aug. 15, 1978; *Appeal of Matthiessen*, 85-SBE-077, July 30, 1985.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars FTB from granting a refund. (*Appeal of Matthiessen, supra.*) Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Matthiessen, supra.*) Federal courts have stated that fixed deadlines may

² Appellant had previously received Concurrent Retirement and Disability Pay (CRDP); however, the March 2017 award by the Department of Veterans Affairs made appellant retroactively eligible for Combat-Related Special Compensation (CRSC). Both forms of compensation are in addition to military retirement pay and disability compensation from the Department of Veterans Affairs. An individual cannot receive both CRDP and CRSC, and therefore appellant's compensation type was retroactively switched to the more advantageous CRSC.

³ State Board of Equalization precedential opinions are viewable on BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*United States v. Boyle* (1985) 469 U.S. 241, 249.)

Here, appellant filed his original returns for the 2011 and 2012 tax years by the due dates of April 15, 2012, and April 15, 2013, respectively. The four-year statute of limitations thus expired four years later, on April 15, 2016, and April 15, 2017, respectively. The one-year statute of limitations expired one year from the date of his last payments, which would have been October 4, 2013, and December 13, 2014, respectively. There is no dispute that appellant did not file his claims for refund until July 15, 2017, and September 29, 2017, respectively, well after the expiration of both the one-year and four-year statutes of limitation. Accordingly, his claims are untimely.

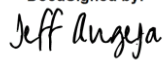
Appellant asserts he could not have filed his claims for refund until the Department of Veterans Affairs notified him on March 28, 2017, of the change in the classification of his compensation. We appreciate appellant's position; however, we unfortunately do not have the legal authority to alter the outcome of this matter in a more satisfactory way for appellant. Without a legislatively enacted exception to the statute of limitations, we do not have the legal authority here to avoid a seemingly unfair or harsh outcome.⁴

HOLDING

Appellant's claims for refund are barred by the statute of limitations.


DISPOSITION


Respondent's action in denying the claims for refund is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

⁴ We note that the November 2017 letter from the military informing appellant that he was entitled to retroactive nontaxable payments for years including the years at issue indicated that the calculations were sent to the Department of Veterans Affairs, who would then be responsible for sending him the payments owed. Accordingly, it appears that appellant should have received the benefit of the retroactive increase directly from the Department of Veterans Affairs, without having to go through the amended returns and claims for refund process.

We concur:

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John O. Johnson
Administrative Law Judge

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Douglas Bramhall
Administrative Law Judge