

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18032372
ALBERT JIMENEZ) Date Issued: March 13, 2019
_____))
_____)

OPINION

Representing the Parties:

For Appellant: Albert Jimenez

For Respondent: Bradley J. Coutinho, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Albert Jimenez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,345.16 for the 2012 taxable year.¹

Appellant waived his right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. FTB received information indicating that appellant earned income sufficient to require him to file a 2012 tax return.²
2. On January 15, 2014, FTB sent a Demand for Tax Return informing appellant that he either needed to file a 2012 tax return, produce a copy of a previously filed return, or provide information showing why he was not required to file.

¹ Appellant’s 2012 tax return reports a refund of \$296. FTB later determined that appellant’s overpayment totaled \$2,345.16, which was the amount acknowledged for this appeal.

² Save Mart Supermarkets reported it paid appellant wages of \$41,839. Vanguard Fiduciary Trust Company reported it paid appellant miscellaneous income of \$1,694.

3. Appellant did not respond, and FTB issued a Notice of Proposed Assessment, proposing tax due of \$1,103, a late-filing penalty of \$275.75, a demand-to-file penalty of \$327.75, a filing enforcement fee of \$78, and interest. Appellant did not protest the proposed assessment. As a result, the proposed assessment became due and payable on May 16, 2014.
4. FTB took collection action, resulting in payment of \$2,103, including a collection cost fee of \$194. FTB collected payments beginning on January 6, 2015, with the final payment made on February 26, 2016.³
5. On September 15, 2017, appellant filed his 2012 tax return, requesting a refund of \$296.⁴
6. FTB processed the return and accepted it as filed. FTB abated the late-filing penalty and reduced the demand-to-file penalty to \$32. FTB also reversed the collection cost fee. The adjustments and payments resulted in an overpayment of \$2,345.16.
7. On October 10, 2017, FTB sent to appellant a notice denying his claim for refund because the applicable statute of limitations had expired by the time appellant filed his return.
8. Appellant timely filed this appeal.

DISCUSSION

In an action for refund, the taxpayer has the burden to prove he or she is entitled to the claimed refund. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235; *Appeal of Estate of Gillespie*, 2018-OTA-052P, June 13, 2018.)⁵

We must first determine whether appellant's claim for refund is timely. A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars him or her from later claiming a refund. (*Appeal of Estate of Gillespie, supra*; *Appeal of Matthiessen*, 85-

³ The bulk of appellant's payments appear to have been collected via a wage garnishment, on a weekly basis, throughout 2015. The final payment was a Treasury Offset Payment of \$94.24, from an overpayment to the federal treasury.

⁴ Appellant filed the return after notification by the Tulare County Sheriff's Office that his wages would be garnished for a \$8,833.73 judgment, with collection to begin on August 25, 2017. Appellant states that the garnishment is for medical bills. Appellant had paid his 2012 state taxes as of February 16, 2016, so the recent garnishment notice is unrelated to this case.

⁵ Precedential decision of the Office of Tax Appeals (OTA) may be found on OTA's website at: <<https://ota.ca.gov/opinions>>.

SBE-077, July 30, 1985.)⁶ Unfortunate circumstances cannot extend the statute of limitations for filing a claim for refund. (*Appeal of Matthiessen, supra.*) Although the statute of limitations may be extended by statute under certain circumstances, those circumstances have not been alleged in this appeal. (See, e.g., R&TC, §§ 19316, 19311.)

The general statute of limitations for filing a refund claim is set forth in R&TC section 19306. Under that statute, the last day to file a claim for refund is the later of (1) four years from the date the return is 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.

Appellant filed his 2012 tax return on September 15, 2017, which constituted his claim for refund. The due date of appellant's return was April 15, 2013. Appellant did not file his tax return within the extended due date for the return (October 15, 2013). Furthermore, appellant did not file his claim for refund by April 15, 2017, within four years of the due date for the return. Lastly, appellant made the bulk of his payments during 2015, with the final payment made on February 26, 2016. The refund period expired one year from the date of the final payment, on February 26, 2017. Consequently, appellant's claim for refund seven months later was beyond the one-year statute of limitations.

Appellant points out that he paid taxes he did not owe and describes several severe economic hardships he is facing. He appeals to OTA to "please help [him]." While we are sympathetic to appellant's circumstances, absent statutory authorization, we do not have general authority to abrogate the statute of limitations for a refund claim based on equitable arguments. (*United States v. Brockamp* (1997) 519 U.S. 347.) Allowing courts to apply equity to allow taxpayers the opportunity to file refund claims late would adversely impact a very large tax administration system that processes millions of refund claims. "The nature and potential magnitude of the administrative problem suggest that Congress decided to pay the price of occasional unfairness in individual cases (penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system." (*United States v. Brockamp, supra*, at pp. 352-353.)

Applying similar reasoning, the United States Supreme Court concluded that the untimely filing of a claim bars a suit for refund regardless of whether the tax is alleged to have been

⁶ Precedential decisions of the State Board of Equalization (BOE) may be found on the BOE's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.


erroneously, illegally, or wrongfully collected. (*United States v. Dalm* (1990) 494 U.S. 596.) Courts have recognized the arbitrary and harsh nature of fixed deadlines, but declined to give equitable relief when a statute of limitations had expired. (See *Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.) We cannot grant equitable relief despite the difficult circumstances faced by appellant.

HOLDING

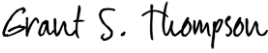
Appellant’s claim for refund is barred by the statute of limitations, and no exception applies to allow the refund.


DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Grant S. Thompson
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge