

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010986
)
W.P. HAINES, INCORPORATED) Date Issued: September 10, 2019
)
_____)

OPINION

Representing the Parties:

For Appellant: Chris Hamilton, CPA
For Respondent: Brian Werking, Tax Counsel
Marguerite Mosnier, Tax Counsel IV
For Office of Tax Appeals: William J. Stafford, Tax Counsel III

GAST, K., Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, W.P. Haines, Incorporated (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying the following refund claim: \$1,213.94 for the 1999 tax year;¹ \$253,291.11 for the 2005 tax year;² and \$8,264.14 for the 2006 tax year.³

Office of Tax Appeals Administrative Law Judges Kenneth Gast, Sara A. Hosey, and Linda C. Cheng held an oral hearing for this matter in Los Angeles, California, on July 23, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for a decision.

¹This consists of a late-filing penalty of \$200, an estimated tax penalty of \$57.10, a post-amnesty penalty of \$166.95, and interest of \$789.89.

²This consists of a late-filing penalty of \$537.50, a notice and demand penalty of \$537.50, a NQSF penalty of \$2,000, an estimated tax penalty of \$44.05, a filing enforcement cost recovery fee of \$203, interest of \$732.54, and an overpayment of \$249,236.52.

³This consists of a late-filing penalty of \$1,740.50, a notice and demand penalty of \$1,740.50, a NQSF penalty of \$2,000, an estimated tax penalty of \$333.17, a filing enforcement cost recovery fee (including lien fee) of \$213, and interest of \$2,236.97.

ISSUES

Whether the statute of limitations was suspended for the 1999, 2005, and 2006 tax years under R&TC section 19316, such that appellant timely filed refund claims for these years, and if so, whether appellant is entitled to a refund of various penalties, interest, fees, and excess funds, as applicable for the disputed tax years.⁴

FACTUAL FINDINGS

1. During the years at issue, appellant was incorporated in California and taxed as a C corporation. It has a fiscal year end of June 30.⁵
2. For the disputed tax years, appellant did not timely file its returns or pay taxes. FTB issued Notices of Proposed Assessment (NPAs) for the 2005 and 2006 tax years,⁶ in which it estimated, under its authority in R&TC section 19087, appellant's taxable income and tax due.⁷ FTB also imposed various penalties (i.e., late-filing; late payment; notice and demand; nonqualified, suspended, or forfeited corporate (NQSFC) penalty; and amnesty), interest, and fees, as applicable for the three years at issue. It collected the liabilities owed either by bank levy, agency offset, payments on account, or otherwise.
3. Appellant ultimately filed its delinquent returns, and for the 2005 and 2006 tax years, reported taxable income that was less than what FTB had estimated in its NPAs. Appellant paid the tax it reported, which FTB accepted. The liabilities in the 2005 and 2006 NPAs—tax, penalties, and interest—were adjusted downward to reflect the lower tax liabilities in appellant's filed returns. Notably, for the 2005 tax year, this led to an overpayment of \$249,236.52, which was not refunded to appellant and is part of its refund claim.

⁴ Appellant's appeal letter also indicated it was appealing the 1998, 2000, 2001, 2002, 2003, 2004, 2007, 2008, 2009, 2010, 2011, 2012, and 2013 tax years. In those years, appellant fully or partially paid various penalties, interest, and fees related to its delinquent filings and payments. However, during the telephonic prehearing conference for this case, appellant stated it is only contesting the 1999, 2005, and 2006 tax years.

⁵ Because appellant is a fiscal year taxpayer, when we say, for example, "the 1999 tax year," we are referring to the year within which the fiscal year begins (i.e., the 1999 tax year corresponds to appellant's fiscal year beginning on July 1, 1999, and ending on June 30, 2000).

⁶ It does not appear FTB issued an NPA for the 1999 tax year.

⁷ The 2005 and 2006 taxable income estimates were based on information from the Employment Development Department and average income amounts reported by businesses in appellant's industry type.

4. Appellant then filed a refund claim, contending that its only shareholders—Mr. Willits P. Haines, III and Mrs. Alice M. Haines, husband and wife, both of whom are now deceased—were ill and undergoing cancer treatment at the time appellant’s returns and tax liabilities became due. In a Notice of Action (NOA), FTB denied the claim (including refusing to refund the \$249,236.52 overpayment for the 2005 tax year) on the basis that it was untimely filed.⁸ FTB asserted that, under R&TC section 19306, the general statute of limitations to file a refund claim had expired, and the “financially disabled” provisions under R&TC section 19316 did not apply to suspend it.
5. This timely filed appeal followed.

DISCUSSION

On appeal, appellant contends the general statute of limitations under R&TC section 19306 should be tolled (i.e., suspended) because its sole shareholders, Mr. and Mrs. Haines, were “financially disabled” within the meaning of R&TC section 19316.⁹ However, appellant’s contention is misplaced. We do not need to address whether appellant’s shareholders were financially disabled or when that disability may have occurred, because R&TC section 19316, on its face, unequivocally applies only to individuals—not to corporations, such as appellant. That section provides the following, in pertinent part:

In the case of *an individual taxpayer under the Personal Income Tax Law* (Part 10 (commencing with Section 17001)), the running of any period specified in Section 19306 . . . shall be suspended during any period during which that *individual* taxpayer is “financially disabled”

⁸ As relevant here, appellant filed two separate refund claim letters—one dated June 13, 2014, and the other dated April 10, 2015. In its NOA, FTB treated the June 13, 2014 letter as appellant’s untimely filed refund claim for 1999, 2005, and 2006, but on appeal, FTB states that it actually treated the April 10, 2015 letter as the untimely filed refund claim. As explained below, we do not need to resolve which letter constitutes appellant’s refund claim for the tax years at issue because both were untimely filed under R&TC section 19306.

⁹ Under R&TC section 19306, 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 by 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. Here, it is undisputed that the four-year statute of limitations to file a refund claim for 1999, 2005, and 2006 expired on September 15, 2004, September 15, 2010, and September 15, 2011, respectively. It is also undisputed that the one-year statute of limitations for 1999, 2005, and 2006 expired on November 8, 2011, August 5, 2012, and August 8, 2012, respectively. Because appellant’s purported refund claim letters dated June 13, 2014, and April 10, 2015, were both filed after these dates, it did not timely file a refund claim under R&TC section 19306. This conclusion would remain true even if appellant had not been suspended with the California Secretary of State from March 1, 2000, until December 26, 2014, because, again, the letters were untimely filed under R&TC section 19306. In addition, we find no earlier refund claim in the record that pre-dates the June 13, 2014 letter.

(R&TC, § 19316(a), emphasis added.) While the term “individual” is not defined in that section, it is defined under the Personal Income Tax Law as “a natural person” (see R&TC, § 17005), which is applicable for purposes of R&TC section 19316 (see R&TC, § 18402(a)). Therefore, R&TC section 19316 does not apply to corporations, such as appellant, which are subject to the Corporation Tax Law under Part 11, not the Personal Income Tax Law under Part 10.

Appellant also argues the California Legislature intended R&TC section 19316 to apply to corporations. However, it has provided no authority—and we are aware of none—to support such an intention. Accordingly, R&TC section 19316 is inapplicable here.

HOLDINGS

The statute of limitations to file a timely refund claim was not tolled for the 1999, 2005, and 2006 tax years under R&TC section 19316, and therefore, appellant’s refund claim for these years was untimely filed. Consequently, appellant is not entitled to a refund of various penalties, interest, fees, and excess funds paid, as applicable for the disputed tax years.

DISPOSITION

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

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge