

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19034504
PHUOC D. NGUYEN)
) Date Issued: October 10, 2019
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OPINION

Representing the Parties:

For Appellant: Phuoc D. Nguyen

For Respondent: Nancy E. Parker, Tax Counsel IV

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

S. BROWN, Administrative Law Judge: This appeal is made pursuant to section 19324 of the Revenue and Taxation Code (R&TC) from the action of respondent Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$924.46 for the 2013 tax year.

Appellant waived the right to an oral hearing and therefore this appeal is being decided on the written record.

ISSUE

Whether the statute of limitations bars appellant’s claim for refund.

FACTUAL FINDINGS

1. Appellant did not timely file his 2013 California income tax return.
2. FTB received information indicating that appellant may have had sufficient income in 2013 to trigger the 2013 filing requirement.¹ As a result, FTB issued a notice dated

¹ FTB estimated that appellant’s income for the 2013 tax year was \$36,906, based on the following: (i) a Form 1099-INT or 1099-OID, which showed that appellant received income of \$19 from Capital One National Association, (ii) information showing that appellant was licensed by the Board of Pharmacy during the 2013 tax year, and (iii) the average income amount of other individuals in appellant’s line of work, which for the 2013 tax year was \$36,887.

March 4, 2015, demanding that, no later than April 8, 2015, appellant file a return or explain why no return was required.

3. When appellant neither filed a return nor otherwise responded to the demand, FTB issued a Notice of Proposed Assessment (NPA) on May 4, 2015, based on the income information received. The NPA set forth a tax of \$871.00, a late-filing penalty of \$217.75, a notice and demand penalty of \$217.75, and a filing enforcement fee of \$76.00, plus applicable interest.
4. Appellant failed to timely protest the NPA and therefore the NPA became a final assessment.
5. Subsequently, FTB initiated collection action, and on April 5, 2016, FTB issued an Order to Withhold Personal Income Tax (Order to Withhold) to Capital One NA (Capital One).
6. In response to the Order to Withhold, FTB received from Capital One a \$1,541.08 payment on June 2, 2016, which satisfied the balances owed for appellant's 2011 and 2013 tax years.
7. On December 26, 2018, FTB received a phone call from appellant's brother-in-law, Quan Tran, regarding an FTB notice for the 2015 tax year. Thereafter, Mr. Tran provided information indicating that appellant had resided in Vietnam since 2010 and had subsequently visited the United States, but had not worked in the United States while visiting.
8. On January 22, 2019, Mr. Tran first inquired about the 2013 tax year, asking if funds would be returned if appellant had not resided or worked in the United States during the 2013 tax year.
9. On January 28, 2019, FTB received a Reasonable Cause-Individual and Fiduciary Claim for Refund, requesting that \$942.46 be refunded to appellant in relation to the 2013 tax year.
10. FTB reviewed appellant's 2013 claim for refund. On February 19, 2019, FTB issued a Notice of Action denying appellant's refund claim. In response, appellant filed this timely appeal.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306.² 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. (R&TC, § 19306.)

The language of the statute is explicit and must be strictly construed. (*Appeal of Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date. (*Appeal of Matthiessen* (85 SBE-077) 1985 WL 15856; *Appeal of Estate of Gillespie* (2018-OTA-052P).³) It is a taxpayer's responsibility to file a claim for refund within the time frame prescribed by law. (*Id.*) In *United States v. Dalm* (1990) 494 U.S. 596, 602, 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 erroneously, illegally, or wrongfully collected. Federal courts have held that the occasional harsh result of fixed deadlines is redeemed by the clarity imparted by such certainty. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.)

We must determine whether appellant has demonstrated that he filed a timely claim for refund/credit for the 2013 tax year. Appellant asserts that he has not resided in the United States since mid-2010 through the end of tax year 2018. Appellant further asserted he was not aware that FTB had seized funds allegedly owed to the State of California. Appellant requests a refund of \$942.46. For its part, FTB contends that appellant's claim for refund is untimely.

Appellant's 2013 return was due on April 15, 2014, and four years from that date was April 15, 2018. Therefore, because appellant's claim for refund was not filed until January 28, 2019, the claim is barred under the four-year statute of limitations.

Regarding the one-year statute of limitations, appellant's most recent payment for the 2013 tax year occurred on June 2, 2016. Hence, the one-year statute of limitations period for the 2013 tax year expired on June 2, 2017. Consequently, because appellant's claim for refund for

² R&TC section 19316 provides a limited exception to the general statute of limitations by tolling the statute of limitations during any period in which a taxpayer is financially disabled. The term "financially disabled" is defined to mean that the taxpayer is unable to manage his financial affairs due to a physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316(a).) Appellant does not contend, and the evidence does not show, that this limited exception applies in this case.

³ OTA opinions are viewable on OTA's website: <<https://ota.ca.gov/opinions>>.

the 2013 tax year was not filed until January 28, 2019, the claim is barred under the one-year statute of limitations.

HOLDING

Appellant has failed to demonstrate that he filed a timely claim for refund for the 2013 tax year.

DISPOSITION

FTB's denial of appellant's claim for refund for the 2013 tax year is sustained.

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge