

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19054747
MANISH GOEL)
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OPINION

Representing the Parties:

For Appellant: Nicholas D. Sher, CPA

For Respondent: Joel Smith, Tax Counsel

J. ANGEJA, Administrative Law Judge: Under California Revenue and Taxation Code (R&TC) section 19324, appellant Manish Goel (appellant) appeals the Franchise Tax Board's (FTB) action denying appellant's claim for refund of \$12,842 for the 2012 tax year. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. For the 2012 tax year, appellant paid a total of \$12,842 by April 15, 2013.
2. FTB received appellant's 2012 tax return on May 4, 2017, reporting total tax of \$1,599. Appellant requested that the balance (\$11,243) be applied to the 2013 estimated tax.
3. Appellant filed an amended 2012 tax return on August 30, 2017. Appellant claimed a 2014 net operating loss of \$43,346, resulting in no tax for 2012. Appellant requested a refund of his \$1,599 overpayment.

4. FTB accepted appellant's amended return as filed, but denied appellant's claim for refund based on the expiration of the applicable statute of limitations. This timely appeal followed.
5. In its opening brief, FTB conceded that, based on a certified mail receipt, appellant established that it filed an original 2012 return on April 13, 2017, and that therefore, appellant filed an original 2012 tax return within four years of the April 15, 2013 due date. Accordingly, FTB concedes that at the conclusion of this appeal, it will refund or credit appellant the \$11,243 claimed on the original return.

DISCUSSION

Under the applicable statute of limitations, 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.) "A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars [the taxpayer] from later claiming a refund." (*Appeal of Estate of Gillespie*, 2018-OTA-052P, at p. 4.)¹

Here, appellant did not file a 2012 tax return by the extended due date. Accordingly, the applicable statute of limitations for appellant to file a timely claim for refund was April 15, 2017.² Appellant timely filed a claim for refund in the amount of \$11,243 with the original return filed on April 13, 2017, and FTB has conceded that amount and will allow that refund to appellant at the conclusion of this appeal. However, appellant did not file the amended tax return (claiming an additional refund of \$1,599) until August 30, 2017, which is beyond the statute of limitations that expired on April 15, 2017. Accordingly, FTB properly denied appellant's \$1,599 claim for refund.

¹ We note that under federal law, the applicable statute of limitations with respect to a claim for refund based on a net operating loss (NOL) carryback is either seven years from the due date of the return for the year to which the NOL is carried back, or three years from the due date of the return for the year in which the NOL is incurred, whichever expires later. (IRC, § 6511(d)(1) & (2).) However, California law does not conform to federal law on the running of the statute of limitations in connection with NOL carrybacks. Likewise, R&TC section 19312, which provides a seven-year statute of limitations related to claims for refund based on bad debt and worthless stock, does not apply to claims for refund based on an NOL carryback.

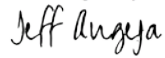
² The one-year statute of limitations from the date of payment expired on April 15, 2014, because appellant made the most recent 2012 tax year payment on April 15, 2013. Since the one-year statute of limitations is inapplicable here, we decline to further address it.

HOLDING

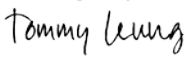
Appellant's \$11,243 claim for refund is timely, but the statute of limitations bars appellant's \$1,599 claim for refund.

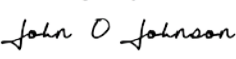
DISPOSITION

FTB's concession to allow appellant's \$11,243 claim for refund, but to otherwise deny appellant's \$1,599 claim for refund, is sustained.

DocuSigned by:

Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:

Tommy Leung
Administrative Law Judge

DocuSigned by:

John O. Johnson
Administrative Law Judge

Date Issued: 1/30/2020