

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
BENEMI PARTNERS, L.P.

) OTA Case No. 19054749
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OPINION

Representing the Parties:

For Appellant: D. Neithercut

For Respondent: Mira Patel, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Benemi Partners, L.P. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$1,835 for 2009, \$1,781.04 for 2010, \$2,187.56 for 2011, and \$2,130.18 for 2012.

Appellant waived its right to an oral hearing; therefore, the matter is decided based on the written record.

ISSUE

Are appellant's claims for refund barred by the statute of limitations, and if not, was appellant required to file tax returns and to pay tax for 2009 through 2012?

FACTUAL FINDINGS

1. Appellant is a limited partnership located in Florida.
2. From 2006 through 2018 appellant held ownership interests in four California entities:
 - a. ACP Power and Energy Real Asset Fund .2 percent
 - b. MAP 2006, L.P. .1 percent
 - c. MHC Operating Limited Partnership .002 percent
 - d. SLP IV Technology Trust .2 percent

3. In response to FTB's demand and collection notices, appellant filed 2010, 2011, and 2012 tax returns.
4. Appellant paid all liabilities (including penalties and interest) assessed by FTB for all taxable years at issue.
5. Appellant's 2009 liability was satisfied in full on December 5, 2013. Appellant's 2010 liability was satisfied in full on July 10, 2014. Appellant's 2011 liability was satisfied in full on April 15, 2014. Appellant's 2012 liability was satisfied by two payments on September 15, 2014, and December 5, 2014.
6. In 2017, appellant obtained a copy of FTB Notice 2017-01 which was "issued for the purpose of informing taxpayers" about the decision in *Swart Enterprises, Inc. v. Franchise Tax Board* (2017) 7 Cal.App.5th 497 (*Swart*).
7. On November 6, 2017, appellant filed a claim for refund of taxes for the 2009 through 2016 taxable years.
8. FTB granted appellant's claims for refund for 2013 through 2016 based on either *Swart* or *Appeals of Finanz AG, et al.* (96-SBE-008) 1996 WL 281551 (*Finanz*).
9. FTB denied appellant's claims for refund for 2009 through 2012 based on the expiration of the statute of limitations.¹ This appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal

¹ The record does not include a denial of appellant's claims for refund based on the statute of limitations. The Claim for Refund Denial dated January 29, 2019, informed appellant that the claims were rejected for 2009 through 2012 because it "did not meet one or more of the facts as per the *Swart* decision."

tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) "This is true even when it is later shown that the tax was not owed in the first place." (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

For appellant, the four-year statute of limitations to claim a refund expired on April 15, 2014, for 2009, on April 15, 2015, for 2010, on April 15, 2016, for 2011, and on April 15, 2017, for 2012.² Pursuant to the one-year statute of limitations, the time to claim appellant's refunds expired on December 5, 2014, for 2009, on July 10, 2015, for 2010, on April 15, 2015, for 2011, and on December 5, 2015, for 2012 (one year after payments were made). Appellant's claim for all four tax years in issue was filed on November 26, 2017.

Appellant asserts on appeal that it had no filing requirement, which appears to be the case under *Swart* and/or *Finanz*, *supra*.³ Unfortunately, appellant was unaware of the possible application of *Finanz* to appellant's facts and circumstances. *Finanz* was decided prior to the years at issue. *Swart* was not decided until January 12, 2017, after the expiration of the time during which appellant could have filed timely claims for all but 2012. However, though appellant may not have had a filing requirement,⁴ there is no authority to equitably toll the statute of limitations on that basis. Notwithstanding the fact that appellant's tax was erroneously paid and not owed in the first place, we must nevertheless find that appellant is not entitled to a refund of taxes paid for 2009 through 2012 due to the expiration of the statute of limitations.

² Appellant did not file returns prior to the extended due date for each taxable year at issue. Therefore, the four-year statute of limitations runs from the original filing due date of April 15.

³ On the same facts, FTB noted in an audit summary that appellant qualified for a refund for taxable years 2014 through 2016 based on application of *Finanz*.

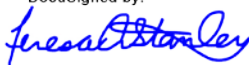
⁴ Because we find that the time to claim refunds for 2009 through 2012 expired before appellant filed its claim, we do not decide the issue of whether during those years appellant had a filing requirement.

HOLDING


The statute of limitations expired for taxable years 2009 through 2012, prior to appellant filing its claim for refund.


DISPOSITION

FTB's denial of the claim for refund for 2009 through 2012 is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

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Josh Lambert
Administrative Law Judge

Date Issued: 2/27/2020