

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**ROBERT T. RAWLS**) OTA Case No. 19075058  
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)**OPINION**

Representing the Parties:

For Appellant:

Robert T. Rawls

For Respondent:

Joel M. Smith, Tax Counsel

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, Robert T. Rawls (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying his claims for refund for the 2008 and 2009 tax years. Appellant waived the right to an oral hearing. Therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellant's claims for refund are barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Because appellant earned sufficient income but did not file 2008 and 2009 California income tax returns, FTB, for each year, issued a Demand for Tax Return and a Notice of Proposed Assessment (NPA). The NPAs estimated his income and proposed to assess tax, a late-filing penalty, a notice and demand penalty, and a filing enforcement fee, plus interest.
2. After the unprotested NPAs went final, FTB initiated involuntary collection activities, receiving \$39,952.99 from appellant, with the last payments received on March 31, 2017, to fully satisfy the 2008 and 2009 liabilities (i.e., tax, penalties, fees, and interest).

3. Subsequently, appellant filed 2008 and 2009 California tax returns. At the top of the first page, the 2008 return shows a handwritten date of August 10, 2018,<sup>1</sup> but in the signature section of both returns, appellant dated them July 10, 2018. The returns reported far less income than FTB estimated, and after application of exemption credits, showed a zero tax liability, which FTB accepted as filed. The returns themselves did not request a refund.
4. FTB treated appellant's 2008 and 2009 returns as claims for refund, and considered them filed on August 10, 2018, not the July 10, 2018 date in the signature section. FTB, however, denied the claims as untimely, and this appeal followed.<sup>2</sup>

### DISCUSSION

Appellant bears the burden of proving entitlement to a refund and the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) R&TC section 19306 provides that no credit or refund shall be allowed or made after 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 extension; or (3) one year from the date of the overpayment.

Appellant's untimely filed 2008 and 2009 returns had original due dates of April 15, 2009, and April 15, 2010, respectively. He thus had until four years from those dates—i.e., by April 15, 2013 for 2008 and April 15, 2014 for 2009—to file a timely refund claim. However, without needing to determine the exact date the claims were filed, the record shows, at best, they were filed no earlier than July 10, 2018. Therefore, appellant is barred under the four-year statute of limitations from obtaining a refund.

Appellant's last payment date for both 2008 and 2009 was March 31, 2017. One year from that date was March 31, 2018. Therefore, appellant is likewise barred under the one-year statute of limitations because, again, his claims were filed no earlier than July 10, 2018.

Appellant nonetheless contends he has reasonable cause for filing late. He alleges he could not locate records to accurately complete the returns, which were stored in a location and

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<sup>1</sup> The date at the top of the 2009 return is illegible, but it also appears to be August 10, 2018.

<sup>2</sup> With his appeal letter, appellant provides Forms 2917, Reasonable Cause—Individual and Fiduciary Claim for Refund, for each year at issue, both signed by appellant and dated May 3, 2019. We note they claim a refund totaling \$39,932.99, which is only \$20 less than the \$39,952.99 that FTB involuntarily collected from appellant. On appeal, appellant indicates the amount at issue is the latter figure. In its opening brief, FTB states the amount is \$40,142.57. It appears appellant is requesting a full refund of tax, penalties, and interest, since his returns reported a zero tax liability, which FTB accepted, and on appeal, he concedes the collection fees. However, since we conclude appellant's refund claims were untimely filed, we do not need to determine the exact amount at issue.

removed during a fire, and the relocation site was not known when the 2008 and 2009 returns were due. He asserts funds should never have been levied since FTB “was fully aware” that no or nominal tax was due. He claims FTB’s taking of his funds may create financial hardship.

We must, however, reject these contentions. There is no reasonable cause or equitable basis for tolling the statute of limitations. (*Appeal of Estate of Gillespie, supra.*) 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. (*United States v. Dalm* (1990) 494 U.S. 596.) Financial hardship does not operate to permit the granting of untimely claims. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Accordingly, appellant is not entitled to a refund for 2008 or 2009.<sup>3</sup>

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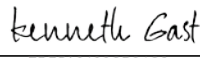
<sup>3</sup> Appellant also argues that the “late discovery exception” applies in this case because “[w]ith the late discovery of evidence, tax returns were filed, and submitted after proper review of source documents utilized to file said returns for 2008 and 2009.” As support, he cites *Silver v. Watson* (1972) 26 Cal.App.3d 905 and *Orange County Rock Products Co. v. Cook Bros. Equip. Co.* (1966) 246 Cal.App.2d 698. However, the late-discovery exception appears to relate to Code of Civil Procedure section 338, which sets forth a three-year statute of limitation for bringing actions grounded on, for example, fraud or mistake, and for it to apply, the complaint must allege facts showing the cause of action could not with reasonable diligence have been discovered prior to three years before the suit. Thus, the exception is applicable only to civil actions filed in court and not administrative claims for refund, such as here. Accordingly, we reject its application in this matter and instead find R&TC section 19306 controlling.

HOLDING

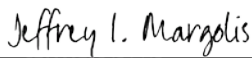
Appellant's claims for refund are barred by the statute of limitations.


DISPOSITION

FTB's denial of appellant's claims for refund is sustained.

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Kenneth Gast  
Administrative Law Judge

We concur:

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Jeffrey I. Margolis  
Administrative Law Judge

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

Date Issued: 2/6/2020