

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20046086
JAYAMPATH P. DHARMASURIYA)
BANKRUPTCY ESTATE)
 _____)

OPINION

Representing the Parties:

For Appellant: Michael E. McCarthy, CPA, CFE

For Respondent: Jean M. Cramer, Tax Counsel IV

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jayampath P. Dharmasuriya Bankruptcy Estate (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$53,312 for the 2011 tax year and \$14,985 for the 2012 tax year.¹

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

ISSUE

Whether appellant's claims for refund were filed prior to the expiration of the statute of limitations.

FACTUAL FINDINGS

1. Jayampath P. Dharmasuriya filed a voluntary Chapter 11 bankruptcy in July of 2009. Pursuant to 11 U.S. Code § 541, the commencement of a case creates a bankruptcy estate, which is the temporary legal owner of all of the debtor's assets and property rights. The

¹ Appellant's 2011 tax year began on October 11, 2011, and ended October 10, 2012, and the 2012 tax year began on October 11, 2012, and ended on October 10, 2013.

- bankruptcy was converted to Chapter 7 in November of 2011. Appellant waived entry of the discharge and no discharge was entered.
2. During appellant's 2011 and 2012 tax years, appellant sold five properties where California state tax was withheld during the course of the real estate escrows.
 3. FTB received appellant's 2011 tax return on September 3, 2019. The return reflected zero taxable income due to a prior year net operating loss carry forward, a zero tax liability, and a \$53,314 withholding credit that resulted in a \$53,314 overpayment. Appellant requested that the overpayment be credited as an estimated tax payment to its 2012 tax year.
 4. FTB received appellant's 2012 tax return on September 18, 2019. The return reflected zero taxable income due to a prior year net operating loss carry forward, a zero tax liability, and a \$14,985 withholding credit plus the \$53,314 estimated tax payment from its 2011 tax year that resulted in an overpayment in the amount of \$68,299. Appellant requested that the overpayment be credited as an estimated tax payment to its 2013 tax year.
 5. On January 9, 2020, FTB denied appellant's claims for refund for its 2011 and 2012 tax years explaining that the refunds were barred by both the four-year and one-year statute of limitations.
 6. This timely appeal followed.

DISCUSSION

Under R&TC section 19306, a valid claim for refund must be filed within: (1) four years from the date the return was 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. The language of R&TC section 19306 must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.²) While the result, including denials of claims when the overpayment is not disputed, may seem harsh, the apparent harshness of fixed deadlines is deemed an acceptable consequence of a clearly stated legal obligation. (*Appeal of Cornbleth, supra*; *Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.) The untimely

² Precedential opinions of the Office of Tax Appeals (OTA) may be found on OTA's website at: <https://ota.ca.gov/opinions>.

filing of a claim bars a suit for refund, regardless of whether the tax is alleged to have been collected erroneously, illegally, or wrongfully. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.)

R&TC section 18566 provides that the time for filing a tax return based on a fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. As appellant is a fiscal year taxpayer, its 2011 return for the 2011 tax year that ended on October 10, 2012, was due on or before February 15, 2013, and its 2012 return for the year that ended on October 10, 2013, was due on or before February 15, 2014.³ As such, the four-year statute of limitations for appellant's 2011 and 2012 tax years lapsed on February 15, 2017, and February 15, 2018, respectively.

FTB received appellant's return for the 2011 tax year on September 3, 2019, which FTB treated as appellant's claim for refund. Since appellant's claim for refund was received more than two years after the deadline to submit a claim for refund for the 2011 tax year (February 15, 2017), the claim for refund is barred.

FTB received appellant's return for the 2012 tax year on September 18, 2019, which FTB treated as appellant's claim for refund. Since appellant's claim for refund was received more than a year after the deadline to submit a claim for refund for the 2012 tax year (August 15, 2018), the claim for refund is barred.

FTB received appellant's tax payments from the withholding payments made as part of the escrow for the sale of each of the five real estate properties.⁴ Appellant also requested that the overpayment from its 2011 tax year be applied as an estimated tax payment for its 2012 tax year. Accordingly, appellant's withholding payments for its 2011 and 2012 tax years were effective on February 15, 2013, and February 15, 2014, respectively. The overpayment from appellant's 2011 tax year that was transferred to pay the first estimated tax payment for its 2014 tax year has an effective payment date of February 15, 2014. As a result, appellant's claims for

³ The respective six-month extension for the 2011 tax year extended the filing date to August 15, 2013, and the six-month extension for the 2012 tax year extended the filing date to August 15, 2014. However, since both returns were filed after their extended due dates the extended due dates were no longer applicable and the returns were due on or before their original due dates of February 15, 2013, for the 2011 tax year and February 15, 2014, for the 2012 tax year.

⁴ Pursuant to R&TC sections 18662 and 18668, real estate withholding is a mandatory prepayment of California state income tax for sellers of California real property. Pursuant to R&TC section 19002(c), payments from withholding, estimated tax and refundable credits are effective as of the original due date of the return. Therefore, taxes withheld during a real estate escrow are payments of taxes duly collected as of the return due date.

refund received on September 3, 2019, and September 18, 2019, for the 2011 and 2012 tax years, respectively, are both barred by the one-year statute of limitations.

Appellant argues that there was a great amount of litigation and negotiation during the bankruptcy which created uncertainty regarding the tax obligations. Appellant chose to wait to file returns until the situation was certain and argues that good cause exists to allow a reasonable extension of time to file a return. However, there is no “reasonable cause” exception to the statute of limitations.⁵ (*Appeal of the Estate of Gillespie*, 2018-OTA-052P.)

Furthermore, appellant relies on R&TC section 18567 to support the argument that a reasonable extension of time to file its tax return applies to this appeal. FTB allows an automatic six-month extension to file a tax return if the return is filed within six months of the original due date. (R&TC, § 18567(a).) An extension of time to file a tax return, however, is not an extension of time to pay; the tax is still due on the original due date of the return without regard to the extension to file. (R&TC, § 18567(b).) Appellant filed its 2011 and 2012 returns well outside the six-month extension set forth in R&TC section 18567(a). Subdivision (c) states that a reasonable extension for payment of tax may be granted by FTB whenever in its judgment good cause exists. Since R&TC section 18567(c) provides a reasonable extension for payment of tax, and not an extension of time to file tax returns, it does not apply to this appeal.

It is undisputed that appellant’s claims for refund were filed outside the statute of limitations, and appellant has not shown that any proper exceptions apply. Therefore, FTB properly denied appellant’s claims.

⁵ R&TC section 19316 provides a limited exception by suspending the statute of limitations during any period in which a taxpayer is “financially disabled.” A taxpayer is “financially disabled” if unable to manage its financial affairs due to a medically determinable 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)-(b)(1).) Appellant does not contend, and the evidence does not show, that this limited exception applies.

HOLDING

Appellant’s claims for refund were not filed within the applicable statute of limitations.

DISPOSITION

FTB’s actions in denying appellant’s claims for refund for the 2011 and 2012 tax years are sustained.

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 5/18/2021