

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. MILINA

) OTA Case No. 20076354
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OPINION

Representing the Parties:

For Appellant: P. Milina

For Respondent: Phillip C. Kleam, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code 19324, P. Milina (appellant) appeals an action by respondent Franchise Tax Board denying appellant’s claims for refund of \$2,052.93 for the 2008 tax year and \$9,368.62 for the 2009 tax year.

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

ISSUES

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

FACTUAL FINDINGS

1. Appellant did not file a timely 2008 California income tax return. After receiving information through its Integrated Non-filer Compliance Program that appellant may have had an obligation to file a return, respondent sent appellant a Demand for Tax Return requesting that, by July 14, 2010, appellant either file a 2008 return or explain why no return was required. As appellant did not respond by the due date, respondent

- issued a Notice of Proposed Assessment (NPA) dated August 10, 2010, for the amount of \$2,005.29.¹ Appellant did not protest the NPA and it became final.
2. Respondent received a \$586.54 credit transfer on November 22, 2010, from appellant's 2006 tax year account and a payment of \$1,632.35 on May 15, 2011, which satisfied the balance then due.
 3. Appellant also did not file a timely 2009 California income tax return. On January 20, 2011, respondent sent appellant a Demand for Tax Return requesting that, by February 23, 2011, appellant either file a 2009 return or explain why no return was required. As appellant did not respond by the due date, respondent issued an NPA dated March 28, 2011, for the amount of \$8,559.16.² Appellant did not protest the NPA and it became final.
 4. In March 2012, appellant entered into an installment agreement with respondent for the 2009 tax year. Pursuant to this agreement, appellant made payments totaling \$9,556.62, which satisfied the balance due for the 2009 tax year. Respondent received the last payment on or about May 26, 2014.
 5. On November 15, 2019, respondent received appellant's 2008 and 2009 returns. The 2008 return showed that appellant had zero tax liability for 2008, which resulted in an overpayment of \$2,052.93. The 2009 return showed that appellant had zero tax liability for 2009, which resulted in an overpayment of \$9,368.62. These returns functioned as appellant's first claims for refund for the 2008 and 2009 tax years.
 6. On March 1, 2020,³ appellant filed second claims for refund for the 2008 and 2009 tax years.
 7. In separate notices, both dated March 20, 2020, respondent denied appellant's claims for refund after determining that they were outside the statute of limitations.
 8. This timely appeal followed.

¹ This amount consisted of a proposed tax liability of \$1,208, penalty for late filing of \$302, penalty for failing to file upon demand of \$302, a filing enforcement fee of \$100, and applicable interest.

² This amount consisted of a proposed tax liability of \$5,463, delinquent filing penalty of \$1,365.75, demand to file penalty of \$1,365.75, a filing enforcement fee of \$100, and applicable interest.

³ It is not clear whether appellant filed these second claims for refund on March 1 or March 2, 2020. This minor difference is immaterial and does not change our analysis.

DISCUSSION

R&TC section 19306(a) sets forth the statute of limitations for timely filing a claim for refund. A taxpayer must file a claim for refund before the end of one of the following time periods, whichever ends later: (1) four years from the date the return was timely filed; (2) four years from the date the return was due (without regard to extension), if the return was filed untimely; or (3) one year from the date of the overpayment. In an action for refund, the taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) “The language of the statute of limitations is explicit and must be strictly construed.” (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) “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.” (*Ibid.*)

We must determine whether appellant’s earliest claims for refund for the 2008 and 2009 tax years filed on November 15, 2019, were timely under any of the prescribed periods. Because appellant did not timely file the 2008 and 2009 returns, appellant was required to file refund claim no later than April 15, 2013, and April 15, 2014, respectively, under the four-year statute of limitations, which is four years from the original due date of that return. (R&TC, § 19306(a).) Under the alternative one-year statute of limitations, appellant was required to file the 2008 and 2009 claims for refund no later than May 15, 2012, and May 26, 2015, respectively, which is one year from the date appellant made the final payments for each specific tax year. (*Ibid.*) Appellant’s earliest claims for refund for both 2008 and 2009, were filed on November 15, 2019, thus were not timely under either the four-year or one-year statutes of limitations. Consequently, appellant’s claims are barred by the statute of limitations.

Appellant asserts that appellant relied on a tax preparer and therefore, believed that the 2008 and 2009 returns had been filed and no liability was due. While appellant acknowledged that some returns may have been filed late, appellant states that appellant believed that extensions had been filed and the requisite payments had been made. Appellant contends that appellant was unaware that money had been withdrawn from appellant’s accounts and did not realize that the withdrawals were related to proposed assessments. Appellant asserts that appellant only became aware of the overpayments after the death of the tax preparer in 2019. Every taxpayer has a personal, non-delegable duty to timely file a tax return. (*United States v.*

Boyle (1985) 469 U.S. 241, 252). Thus, appellant was required to personally ensure that the timely filing of appellant’s 2008 and 2009 returns. While we understand appellant’s circumstances, nothing in the statutory language of R&TC section 19306 permits a tolling of the statute of limitations for these reasons.

Appellant provides no other legal or factual basis to support appellant’s position. Thus, appellant has not met the burden of proof to show that the claims for refund should be allowed.

HOLDING

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

DISPOSITION

Respondent’s actions denying appellant’s claims for refund for 2008 and 2009 are sustained.

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
E. S. Ewing
2D8DE82EB65E4A6
Elliott Scott Ewing
Administrative Law Judge

Date Issued: 5/4/2021