

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
F. KABBA

) OTA Case No. 20127092
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OPINION

Representing the Parties:

For Appellant: Jose Rafael Nieves Alvarez, Attorney

For Respondent: Tristen Thalhuber, Graduate Student Assistant

For Office of Tax Appeals: Megan Gregory, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Kabba (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,362.61 for the 2014 taxable year.

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

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations under R&TC section 19306.

FACTUAL FINDINGS

1. Respondent determined from its records that appellant may have earned enough income to require her to file a 2014 California tax return.
2. On November 10, 2016, respondent issued a Notice of Proposed Assessment (NPA) for the 2014 taxable year to appellant, communicating that appellant owed \$9,116.19.¹
3. The NPA went final, and on January 29, 2018, appellant started paying down this amount with an installment payment plan. Appellant continued to make monthly payments until December 30, 2019.
4. Appellant filed her 2014 tax return on March 24, 2020. Respondent accepted appellant's 2014 tax return and reduced appellant's tax liability to zero, treating the return as a claim for refund.
5. When appellant filed her 2014 tax return, her monthly installment and interest payments to respondent cumulatively amounted to \$4,044.49.
6. Respondent issued appellant a refund of \$1,681.88² on September 2, 2020, reflecting a refund of the amounts she had overpaid to respondent in the year preceding the filing of her claim for refund, from March 25, 2019, to March 24, 2020.
7. Respondent did not refund appellant the portion of the payments, amounting to \$2,362.61, that appellant had remitted to respondent prior to March 25, 2019.
8. On October 26, 2020, appellant sent respondent a Taxpayer Advocate Assistance Request to request a refund for \$2,362.61, so that she cumulatively would be refunded the full \$4,044.49 she had overpaid to respondent.
9. Respondent denied the refund claim, explaining that the statute of limitations barred appellant from receiving the full refund.

DISCUSSION

If the taxpayer can show that he or she has overpaid any liability imposed under the Personal Income Tax Law and has timely filed his or her claim for refund, the amount of the

¹ This amount is the sum of additional tax of \$6,895.00, a late payment penalty of \$1,723.75, a filing enforcement fee of \$81.00, and applicable interest.

² This refunded amount is comprised of the installment payments and the \$29.88 of interest that appellant paid within the one-year statute of limitations period from March 25, 2019, to March 24, 2020, and two \$34.00 processing fees paid for establishing the installment payment plan.

overpayment is credited against the amount due, if any, and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) A claim for refund must be filed within the later of: (1) four years from the date the return was filed, if the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. (R&TC, § 19306(a); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

If the statute of limitations for claiming the refund has expired, then any overpayment will not be refunded. (R&TC, § 19306(a).) This rule is construed strictly. (*Appeal of Cornbleth*, 2019-OTA-408P.) Exceptions are not granted even on equitable bases or for reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Even if the taxpayer shows that he or she did not actually owe the tax paid, the taxpayer is barred from receiving a refund if the statute of limitations has elapsed. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602;³ *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Federal courts have held that fixed deadlines may appear harsh because they can be missed by a single day or even a single hour, but the resulting occasional harshness is redeemed by the clarity they give to the legal obligation. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Here, appellant did not file her 2014 tax return by the automatic extended due date, and as such the four-year statute of limitations from the return's original due date would be April 15, 2019. (R&TC, § 19306(a).) Appellant's March 24, 2020 filing of her 2014 tax return exceeds this four-year statute of limitations. The one-year period, which requires that appellant file a claim for refund within one year of the date of the overpayment, is the applicable statute of limitations period to apply, as it is the later of either period allowed under R&TC section 19306(a). (*Ibid.*) Appellant's March 24, 2020 claim for refund entitled appellant to a refund for the overpayments she made within the one-year statute of limitations period preceding this date, from March 25, 2019, to March 24, 2020. (*Ibid.*) Respondent refunded appellant \$1,681.88 on September 2, 2020, reflecting the sum of the overpayments she had made within that one-year period. The remaining payments totaling \$2,362.61 were made outside of the statute of limitations period and cannot be refunded.

³ In *U.S. v. Dalm*, *supra*, the United States Supreme Court held that the taxpayer was not entitled to a refund for taxes, which she ultimately did not owe, because her claim for refund was untimely filed. This case arose under Internal Revenue Code section 6511(a), to which R&TC section 19306 is analogous.

Appellant contends that all amounts she paid toward the liability imposed by the NPA, totaling \$4,044.49, should be refunded to her. However, the statute of limitations bars appellant from a full refund, even though she did not owe these payments. “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 Benemi Partners, L.P., supra*, citing *Appeal of Matthiessen, supra*.)

Accordingly, respondent properly refunded appellant the sum of the overpayments she made between March 25, 2019, and March 24, 2020. While appellant’s contention that she should be refunded for all overpayments she made is understandable, it is not allowed due to the limits imposed by R&TC section 19306(a).

HOLDING

Appellant’s claim for refund is barred by the statute of limitations under R&TC section 19306.

DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.

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Tommy Leung

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Tommy Leung

Administrative Law Judge

We concur:

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

DocuSigned by:

John O. Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 9/9/2021