

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
W. MCCLAY

) OTA Case No. 20086426
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OPINION

Representing the Parties:

For Appellant: Dr. W. McClay, PhD

For Respondent: Phillip C. Klean, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. McClay (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,266 for the 2009 tax year.

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

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California return for the 2009 tax year.
2. FTB received information indicating that for the 2009 tax year, appellant received California source income and had a California filing requirement.¹
3. On February 15, 2011, FTB sent appellant a Request for Tax Return (Request), requesting that appellant reply no later than March 23, 2011, by either filing his tax return for 2009, or by providing information to determine whether he had a California filing requirement.

¹ FTB received income information from The Aerospace Corporation and Regents of the University of California.

4. When appellant failed to respond to the Request, FTB issued appellant a Notice of Proposed Assessment (NPA), dated April 18, 2011, setting forth estimated California taxable income. The NPA proposed additional tax of \$2,525.00, a late-filing penalty of \$631.25, and applicable interest.
5. Appellant did not protest the NPA, and it became a final assessment.
6. When appellant failed to pay the balance due, FTB pursued involuntary collection action and imposed a \$154 collection cost recovery fee. As part of the collection activity, FTB recorded a Notice of State Tax Lien in Orange County on November 22, 2011, and imposed a \$8 lien fee.
7. On June 6, 2012, FTB received a payment of \$25.
8. In May 2016, appellant timely filed his 2015 California return within the automatic six-month extension, reporting an overpayment of \$1,862.40, which FTB applied to appellant's 2009 tax year account on May 27, 2016.
9. On July 17, 2016, appellant untimely filed his 2009 California Nonresident or Part Year Resident Income Tax Return, reporting tax due of \$1,204, a withholding credit of \$3,607, and an overpayment of \$2,403.² Appellant did not self-assess a late-filing penalty.³ FTB accepted appellant's 2009 return as filed and treated it as a claim for refund.
10. FTB determined that due to the applicable statute of limitations for timely claims for refund, FTB could only refund appellant \$1,898.09 (\$1,862.40 + \$35.69 in interest).
11. On March 21, 2017, FTB issued appellant a refund of \$1,898.09, resulting in an overpayment of \$2,266⁴ remaining on appellant's 2009 tax year account.

² Appellant reported income from The Aerospace Corporation; however, it appears that appellant did not report income from Regents of the University of California. While it is unclear why appellant did not report income from Regents of the University of California, we note that FTB accepted appellant's return as filed, which reduced appellant's tax liability to the reported amount. Since this is in appellant's favor, it will not be discussed further.

³ While FTB previously assessed a \$631.25 late-filing penalty, it appears from appellant's 2009 Tax Year Current Values Display that the late-filing penalty was not included in appellant's 2009 revised liability. It is unclear why FTB did not include the late-filing penalty, as appellant filed an untimely 2009 tax return; however, this apparent error is in appellant's favor and will not be discussed further.

⁴ This amount consists of the revised liability of \$1,366 for the 2009 tax year (i.e., reported tax liability of \$1,204 + collection cost fee of \$154 + collection lien fee of \$8) - \$5,530.09 in account credits (i.e., \$3,607 reported withholding credit + \$25 payment + \$1,862.40 transferred from appellant's 2015 tax year account + \$35.69 interest refunded) + \$1,898.09 refunded to appellant (which includes the \$35.69 interest refunded already credited to appellant's account).

12. On March 31, 2017, FTB released the November 22, 2011 tax lien it recorded in Orange County. Subsequently, FTB sent appellant a Notice of Release of Lien, notifying appellant that it released the tax lien.
13. On July 27, 2020, appellant filed a second claim for refund for the remaining amount of \$2,266, which FTB denied.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer 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 of the return (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.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) The law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances. (*United States v. Brockamp* (1997) 519 U.S. 347, *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Further, neither ill health of a taxpayer, nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie, supra.*) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra; Appeal of Khan*, 2020-OTA-126P.) 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; *Appeal of Benemi Partners, L.P., supra.*)

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; *Appeal of Estate of Gillespie, supra.*) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant’s 2009 tax return, which was untimely filed on July 17, 2016, and reported an overpayment of \$2,403, is considered appellant’s claim for refund. Appellant’s 2009 return was due on April 15, 2010; therefore, the four-year statute of limitations for filing a claim for refund expired on April 15, 2014, which is two years before appellant filed his July 17, 2016 claim for refund. Therefore, appellant filed his claim for refund past the four-year statute of limitations period.

Two credits were applied to appellant’s 2009 tax account: (1) a payment of \$25 received on June 6, 2012; and (2) \$1,862.40 transferred from appellant’s 2015 account on May 27, 2016. The one-year statute of limitations for the June 6, 2012 payment expired on June 6, 2013, which is four years before appellant filed his July 17, 2016 claim for refund. Therefore, appellant filed his claim for refund past the one-year statute of limitations period for the \$25 payment. The one-year statute of limitations for the May 27, 2016 payment expired on May 27, 2017, which is after appellant filed his July 17, 2016 claim for refund. Therefore, appellant filed his claim for refund within the one-year statute of limitations period for the \$1,862.40 payment. Thus, FTB issued appellant a refund of the May 27, 2016 payment of \$1,862.40, plus applicable interest, on March 21, 2017. Both of appellant’s claims for refund, as they pertain to the remaining overpayment of \$2,266, are barred by the statute of limitations.⁵

Appellant contends that the statute of limitations should not apply for various reasons, including because: (1) the property lien that FTB recorded “constituted a deleterious effect on [his] credit reporting[,] thwarting [his] employment” with the military;⁶ (2) he “never received any of the disclosed information;”⁷ and (3) FTB never informed appellant to file a timely claim for refund within the statute of limitations periods.

FTB has no duty to discover overpayments made by a taxpayer, nor to notify a taxpayer of such overpayments. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Furthermore, FTB does not have a duty to inform a taxpayer of the time within which a claim for refund must be

⁵ Appellant’s second claim for refund, dated July 27, 2020, was filed well past both the four-year and one-year statute of limitations.

⁶ We note that on March 31, 2017, FTB released the November 22, 2011 tax lien that it recorded in Orange County. As the lien has been released, it will not be discussed further.

⁷ Attached to appellant’s brief which contains this contention is FTB’s notice of action, notifying appellant that FTB was denying his claim for refund in the amount of \$2,266, which is the document appellant timely appealed to Office of Tax Appeals.

filed to avoid the application of the statute of limitations. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.)

As discussed above, the language of R&TC section 19306 is explicit and must be strictly construed, without exception, and a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date. (*Appeal of Cornbleth, supra; Appeal of Benemi Partners, L.P., supra; Appeal of Khan, supra.*) Since appellant's claim for refund was filed after the statute of limitation periods, appellant's claim is barred by the statute of limitations.

HOLDING

Appellant's claim for refund, as it pertains to the remaining overpayment of \$2,266, is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

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Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

Cheryl L. Akin

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 1/6/2022