

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. CARROLL

) OTA Case No. 21068083
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OPINION

Representing the Parties:

For Appellant: S. Carroll

For Respondent: Joel M. Smith, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Carroll (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$16,130.19 for the 2005 tax year.

This appeal is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Is any part of appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not timely file an income tax return for 2005.
2. On February 5, 2007, respondent issued a Demand for Tax Return (Demand) to appellant, which instructed appellant to reply by March 7, 2007, by filing a 2005 tax return, providing a copy of his 2005 tax return, if already filed, or explaining why appellant believed he was not required to file a 2005 return. Appellant did not reply to the Demand.
3. On April 17, 2007, respondent issued a timely Notice of Proposed Assessment (NPA) to appellant, which estimated appellant’s income and proposed tax thereon, as well as accrued interest, a 25 percent penalty for failing to timely file a return, a 25 percent

penalty for failing to timely reply to the Demand, and a filing enforcement cost fee. The NPA informed appellant that the proposed liability would become due and payable on June 18, 2007, unless appellant filed a 2005 return or provided information to show that he was not required to file one. The NPA also informed appellant regarding his protest rights and stated, in bold letters, “Filing a tax return may reduce your tax liability, and will ensure that you receive full credit for tax withheld by employers, as well as any other credits, exemptions, and deductions that you have a right to claim.”

4. Appellant did not reply to the NPA. The liability became final, and respondent initiated collection action, including the filing of a lien. As a result, respondent also imposed collection cost and lien fees.
5. Respondent collected most of the amount due by February 13, 2018, which is when appellant requested an installment payment agreement (IPA). We do not have a copy of the entire request for an IPA, and thus, we cannot independently determine whether it met the requirements for a claim for refund. However, the request states, in part, that appellant continued to believe that respondent’s estimate of appellant’s 2005 taxable income was “way off,” particularly given that he had no income for the 2004 tax year.
6. Appellant made the final installment, paying the 2005 tax liability in full (the final payment), on August 12, 2019. Consequently, appellant’s formal claim for refund was deemed filed on August 12, 2019.
7. Appellant filed a 2005 California Resident Income Tax Return on November 24, 2020. Respondent accepted the return as filed and also treated the return as a claim for refund.
8. By letter dated March 16, 2021, respondent acknowledged a \$16,130.19 overpayment on appellant’s 2005 account but denied appellant’s claim for refund on the grounds that it was barred by the statute of limitations.
9. This timely appeal followed.
10. Respondent now agrees that appellant’s February 13, 2018 IPA request was an informal claim for refund under R&TC section 19322.1, and it states that it will refund payments made within the year preceding August 12, 2019, the date appellant’s formal claim for refund is deemed filed.

DISCUSSION

As relevant here, a claim for credit or refund must be filed within four years from the date the return was filed, if filed within an extension allowed by R&TC, §§ 18567 or 18604, within four years from the last day prescribed for filing the return without regard to any such extension, or within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

A claim for refund that is filed before the entire tax is paid is considered an informal claim for refund, which tolls the statute of limitations but for all other purposes is deemed filed when the tax is paid in full, except that no credit or refund will be due for any payment made more than seven years before the date the tax is paid in full. (R&TC, § 19322.1.) In other words, if respondent is receiving periodic payments against a liability for a given year, the taxpayer will not have to file new claims every year as a protection against the statute of limitations. For example, if a taxpayer does not file a claim for refund within either of the four-year periods prescribed by R&TC section 19306(a), but it eventually makes a partial payment against a liability for a given tax year and files a claim for refund of that payment one year later, that claim would be considered an informal claim that suspends the limitations period. As long as the taxpayer pays the entire liability for that tax year within seven years of the initial payment, taxpayer's formal claim for refund will be deemed filed on the final payment date and will be considered timely for all payments made.

It is undisputed that appellant did not file a 2005 return until November 24, 2020, more than 14 years after the due date. The 2005 return reported a \$16,130.19 overpayment. Respondent accepted appellant's 2005 return as filed, treated it as a claim for refund, and then rejected the claim because it was outside the statute of limitations. On appeal, appellant's sole argument is that he was not aware of the statute of limitations and that respondent's refusal to refund money that appellant did not owe is unfair to appellant and his family.

Ignorance or a misunderstanding of the law generally does not excuse a failure to comply. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) And while we understand that denying appellant a refund of over \$16,000 is a harsh result for him and his

family, the statute of limitations is clear and we have no authority to grant relief, except to the extent the law specifically allows.

It is also undisputed that appellant did not file his 2005 return and claim for refund within the applicable four-year limitations periods prescribed by R&TC section 19306(a). Therefore, the applicable limitations period is one year from the date of the overpayments. If appellant filed his claim on November 24, 2020, the date he filed his return, respondent's initial denial of the claim would have been correct because the only payment made by appellant within the year prior to November 24, 2020, was a December 17, 2019 transfer credit from the 2017 tax year, which respondent allowed on January 12, 2021, as a credit transfer to the 2009 tax year. However, respondent contends on appeal that appellant filed an informal claim on February 13, 2018, and that appellant's claim is timely only for the payments made within the year prior to the final payment date, which was August 12, 2019. On that basis, respondent states it will refund or credit to appellant \$42.53, which is the total of payments made on April 8, 2019 (\$36.80) and August 12, 2019 (\$5.73).

Respondent's conclusion that the one-year limitations period applies remains correct because the informal claim was not filed within the four-year limitations periods prescribed by R&TC section 19306(a); but respondent's analysis otherwise ignores the tolling effect of appellant's informal claim as set forth in R&TC section 19322.1. When an event tolls the running of the statute of limitations, the operation of the statute of limitations is suspended. (*Schrader v. Scott* (1992) 8 Cal.App.4th 1679, 1684, fn. 1.) Respondent agrees that appellant's February 13, 2018 request for an IPA was a valid, informal claim for refund. Therefore, respondent must also agree that the statute of limitation was suspended on February 13, 2018, and remained suspended from that date until the formal claim was deemed filed when appellant made the final payment on August 12, 2019. In effect, appellant's informal claim was timely as to any payments made by appellant within the year before the informal claim date, and when appellant's informal claim went formal within six years, appellant's claim remained timely for all payments made during the period of suspension. Consequently, we find that appellant's claim for refund was timely for payments made on or after February 13, 2017, and that the refund to appellant should be adjusted accordingly.

HOLDING

The refund to appellant should be adjusted to allow a refund of payments made on or after February 13, 2017, for the 2005 tax year.

DISPOSITION

Respondent’s action is overruled to the extent it denies appellant’s claim for refund of payments made on or after February 13, 2017, but it is otherwise sustained.

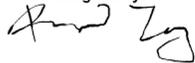
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Michael F. Geary
Administrative Law Judge

We concur:

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Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 3/4/2022