

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21088458
P. CHANG)
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OPINION

Representing the Parties:

For Appellant: P. Chang

For Respondent: Christopher M. Cook, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Chang (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s remaining claim for refund of \$6,357.94 for the 2011 tax year.

Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Because appellant had not filed his 2011 California personal income tax return, FTB issued a Notice of Proposed Assessment for that year that estimated his income and computed tax, penalties, a fee, and interest.
2. FTB then instituted collection actions for several tax years, including 2011. Proceeds from these actions were applied to appellant’s 2011 tax year account starting on June 10, 2019, and ending with a final payment on December 16, 2020.
3. FTB ultimately received (and accepted as filed) appellant’s untimely 2011 California tax return on April 15, 2021, nine years after its due date. The return reported tax due, but

appellant did not make payment because he believed he already paid through FTB's collection actions.

4. FTB sent appellant a notice informing him that it was treating his 2011 filed return as a refund claim. In that notice, FTB indicated there was a total overpayment of \$7,658.65, and of that amount, it had allowed a partial refund of \$1,300.71 but disallowed the remaining \$6,357.94. This timely appeal followed on the disallowed amount.

DISCUSSION

The statute of limitations to file a claim for refund is governed by R&TC section 19306. That section provides that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed under an extension of time to file; (2) four years from the due date for filing a return for the year at issue (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.)

Appellant does not dispute—and we find no error in FTB's determination—that he filed his 2011 California tax return (which FTB treated as his refund claim) beyond the statute of limitations and is not entitled to a refund of \$6,357.94 on that basis. Rather, appellant's only argument is his income was overstated on a 2011 Form 1099-MISC issued to him by the payor, who was audited by the IRS and ultimately paid additional tax to the IRS but not FTB. Appellant indicates it is his fault for not filing a timely return and requests we grant a percentage of his claimed refund.

However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) In addition, Office of Tax Appeals lacks the authority to settle or compromise amounts at

issue and therefore we cannot grant a percentage of appellant’s claimed refund. (See *Appeal of Robinson*, 2018-OTA-059P.)

HOLDING

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

DISPOSITION

FTB’s action denying appellant’s refund claim is sustained.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

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

Date Issued: 2/1/2022