

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21078243
W. LEE AND)
M. LEE)
_____)

OPINION

Representing the Parties:

For Appellants: Natalie E. Hudgins, CPA

For Respondent: Tristen Thalhuber, Grad. Student Assistant

For Office of Tax Appeals: Steven Kim, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. and M. Lee (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,360 for the 2016 tax year.

Appellants have elected to have this appeal determined pursuant to the procedures of the Small Case Program, including the assignment of a single administrative law judge and this Opinion’s ineligibility for precedential consideration.¹ This matter is also being decided based on the written record because appellants waived the right to an oral hearing.

ISSUE

Is appellants’ claim for refund for the 2016 tax year barred by the statute of limitations?

FACTUAL FINDINGS

1. Respondent obtained information for the 2016 tax year indicating that appellant-husband sold real property in California and may have earned sufficient income to trigger a California filing requirement. Because appellants did not file a 2016 California income

¹ The provisions of the Small Case Program are found at California Code of Regulations, Title 18, section 30209.1, effective March 1, 2021.

- tax return, respondent issued appellant-husband a Request for Tax Return dated April 3, 2018.
2. On May 7, 2018, appellants responded to the Request for Tax Return, indicating that they realized a loss from the property sale, and thus did not have a California filing requirement.
 3. On August 24, 2018, respondent issued appellants a confirmation letter stating that it would take no further action based on the information appellant-husband provided. The letter also informed appellant-husband that he must file a return to claim any credits for estimated tax payments or withheld state income tax.
 4. On February 12, 2021, respondent issued appellant-husband a notice stating that he may be entitled to nonwage withholding credits for the 2016 tax year, but that to claim those credits, he would need to file a return by the statute of limitations date, even if appellant did not have a filing requirement. The notice further informed appellant-husband how to calculate the time remaining to file a return to avoid the bar of the statute of limitations.²
 5. On May 15, 2021, appellants filed their 2016 joint California nonresident income tax return, claiming an overpayment of \$2,360.
 6. On July 14, 2021, respondent issued appellants a letter denying the claim for refund because it was barred by the statute of limitations. This timely appeal followed.

DISCUSSION

Under R&TC section 19306, a valid claim for refund must be filed within whichever of the following periods expires later: (1) four years from the date the return was filed, if filed within the extended due date;³ (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. The language of R&TC

² The letter stated, in pertinent part, “We may not be able to allow you a refund or a credit if you do not respond in a timely manner. There is a time limit, known as the statute of limitations, for claiming a refund or credit (California Revenue and Taxation Code Section 19306). Under this statute, you must file your tax return, which functions as your claim for refund or credit, within one of the following time frames (whichever is later):

- Four years from your tax return's original due date.
- Four years from the date you actually filed your tax return, if you filed by the extended due date.
- One year from the date you made the withholding payment. We consider withholding payments made during the year as paid on the tax return's original due date.

³ FTB allows an automatic six-month extension to file if the return is filed within six months of the original due date. (Cal. Code Regs., tit. 18, § 18567.) This granting of the extension is conditioned solely upon the filing of a return within the automatic extension period. (*Ibid.*) If the return is not filed within six months of the original due date, no extension is allowed. (*Ibid.*)

section 19306 must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.)

The untimely filing of a claim bars a suit for refund, regardless of whether the tax is alleged to have been collected erroneously, illegally, or wrongfully. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) While the result may seem harsh, especially for claims involving an undisputed overpayment, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Cornbleth*, supra.) A statute of limitations is an almost indispensable element of fairness as well as of practical administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellants argue that the statute of limitations would have expired on October 15, 2021, four years after the extended due date, had they not filed their claim before that date. They assert their return, and therefore their claim for refund, was timely.

Appellants misunderstand the law. R&TC section 19306 clearly states that the first-described limitations period expires four years from the extended due date only if the return is filed within the extended period. Because appellants did not file their return by the extended due date, that four-year limitations period does not apply to our facts. Because withheld amounts are deemed paid on the original due date, April 15, 2017 (R&TC, § 19002(c)(1)), the third period described above expired on April 15, 2018, more than three years before appellants filed their 2016 return on May 15, 2021. However, the last limitations period did not expire until May 17, 2021, which was four years from the original due date, plus the one-month postponement allowed by FTB.⁴ Thus, appellants filed their return two days before the last limitations period expired, and their claim for refund was not barred by the statute of limitations.

⁴ On March 19, 2021, FTB announced a postponement of the state tax filing and payment deadline for individual taxpayers from April 15, 2021, to May 17, 2021.

HOLDING

Appellants' claim for refund for the 2016 tax year is not barred by the statute of limitations.

DISPOSITION

Respondent's action denying the claim for refund is overruled.

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Michael F. Geary
Administrative Law Judge

Date Issued: 4/19/2022