

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**F. AZZOLINO**

) OTA Case No. 21108727  
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**OPINION**

Representing the Parties:

For Appellant: Christopher Ong

For Respondent: Christopher Cook, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Azzolino (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$15,302.00 for the 2016 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. FTB received a nonwage withholding payment of \$15,302 during appellant’s 2016 tax year because appellant sold real property on or about April 4, 2016. FTB applied the payment to appellant’s 2016 tax year with an effective date of April 15, 2017.
2. On April 15, 2017, appellant timely filed his 2016 tax return; however, appellant did not claim the \$15,302 non-wage withholding on the California resident income tax return.
3. On September 22, 2020, FTB issued appellant a letter notifying appellant that there was a \$15,301.50 unclaimed nonwage withholding credit available for the 2016 tax year. The

letter stated that appellant must file an amended return before the expiration of the applicable statute of limitations for claiming a credit or refund.

4. On July 15, 2021, FTB received appellant's amended 2016 California resident income tax return requesting a refund of \$15,302 for the 2016 tax year.
5. On August 5, 2021, FTB denied appellant's claim for refund.
6. This timely appeal followed.

#### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may 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 pursuant to 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.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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. (*United States v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Here, it is undisputed that appellant filed his claims for refund after the expiration of the applicable time periods under the statute of limitations. Appellant timely filed his 2016 tax return on April 15, 2017. Appellant would need to file a claim or refund within the later of April 15, 2021, which is four years from the return due date determined without regard to

extensions, or April 15, 2018, which is one year from the date of overpayment.<sup>1</sup> The latest of these dates is April 15, 2021, which is further extended to May 17, 2021, due to FTB’s extended relief for the 2020 tax year.<sup>2</sup> Nonetheless, appellant’s refund claim is still barred by the statute of limitations because he filed his claim for refund on July 15, 2021, which is after both April 15, 2021, and May 17, 2021.

On appeal, appellant argues that: (1) he was told that no taxes would be owed to the IRS or California; (2) he was not aware of the withholding, until he received the September 22, 2020 letter; and (3) due to COVID-19 issues, he had “a tough time trying to get to the bottom of what happened.” However, the issue at present is the statute of limitations. For purposes of applying the statute of limitations for overpayments, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp, supra*. [no intent to apply equitable tolling in a federal tax statute of limitations].) Furthermore, appellant has the burden of proof to show that he is entitled to a credit or refund. (*Appeal of Estate of Gillespie, supra*.) Here, appellant did not provide any other provision under the law and facts that would allow us to disregard the statute of limitations. We understand the perception of unfairness here. However, any perceived unfairness is redeemed by the clarity of the legal obligation imparted by the clear deadlines to file a claim for refund. (*Prussner v. U.S., supra*, 896 F.2d at pp. 222-223.) Therefore, appellant’s assertions are not enough to satisfy the burden of proof to overturn FTB’s disallowance of the claim for refund.

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<sup>1</sup> The first four-year statute of limitations period is not applicable here since appellant filed his 2016 return by the original April 15, 2017 due date rather than during the extension period. The due date for filing the 2016 return, determined without regard to extensions, was April 15, 2017. (See R&TC 18566.)

<sup>2</sup> See FTB Newsroom: *2020 tax year extension to file and pay (individual)* (<https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>).

HOLDING

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

DISPOSITION

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

DocuSigned by:

*Eddy Y.H. Lam*

Eddy Y.H. Lam

Administrative Law Judge

We concur:

DocuSigned by:

*Cheryl L. Akin*

Cheryl L. Akin

Administrative Law Judge

DocuSigned by:

*Sheriene Anne Ridenour*

Sheriene Anne Ridenour

Administrative Law Judge

Date Issued: 3/25/2022