

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
G. LUMFORD

) OTA Case No. 21108810
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: G. Lumford

For Respondent: Eric A. Yadao, Tax Counsel IV

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Lumford (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,308.74 for the 2016 tax year.

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

ISSUE

Whether appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a California tax return (return) for the 2016 tax year.
2. Respondent received information that appellant may have received income during the 2016 tax year that would require the filing of a return. Respondent then issued appellant a Request for Tax Return (Request). Appellant did not file a return or otherwise respond to the Request by the deadline set by respondent.
3. Because appellant did not reply to the Request, respondent issued a Notice of Proposed Assessment (NPA), which estimated appellant’s income based on the information

- respondent had received and proposed to assess additional tax of \$2,064, a late filing penalty of \$516, and applicable interest.
4. Appellant did not respond to the NPA, which went final, and respondent issued appellant a Notice of State Income Tax Due (Notice). After respondent did not receive payment within the 30 days prescribed in the Notice, respondent took collection actions and collected four payments and credit transfers. These credits were recorded by respondent with effective payment dates of September 11, 2019, December 20, 2019, March 24, 2020, and March 27, 2020.
 5. After the credits were recorded by respondent and after appellant inquired with respondent about his account, appellant untimely filed his 2016 tax year return on July 7, 2021. The return reported an amount due that was less than the amount collected by respondent via its collection actions; therefore, respondent treated the return as a claim for refund of the difference. Respondent did not refund the reported overpayment because it asserted that the period during which to claim a refund under the statute of limitations had expired.
 6. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The applicable statute of limitations, R&TC section 19306(a), provides, in relevant part, that no credit or refund shall be allowed unless a claim for refund is filed within four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return), or one year from the date of the overpayment. (R&TC, § 19306(a)(2), (3).) The statute of limitations to obtain a refund is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Cornbleth*, 2019-OTA-408P, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.) The taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

In this case, respondent made four separate collections to satisfy the amounts due in the Notice, the last of which was recorded on March 27, 2020. The date prescribed for filing the 2016 tax year return was April 17, 2017.¹ Appellant’s untimely 2016 tax year return (which was treated as a claim for refund) was filed on July 7, 2021, and therefore was more than four years from the due date prescribed for filing the return (i.e., April 15, 2017),² and more than one year from the dates the collection amounts were recorded by respondent (i.e., September 11, 2019, December 20, 2019, March 24, 2020, and March 27, 2020). (See R&TC, § 19306(a)(2), (3).) Thus, appellant’s July 7, 2021 claim for refund was filed after the expiration of both time periods prescribed in the applicable statute of limitations. Nevertheless, appellant makes a reasonable cause-type assertion, implying that the COVID-19 pandemic prevented him from filing his claim for refund before the expiration of the statute of limitations. However, there is no “reasonable cause” exception to the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA- 052P.) Moreover, neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Ibid.*) In sum, appellant has not met his burden of proving entitlement to the claimed refund.

¹ April 15, 2017, was a Saturday, so 2016 tax year returns were considered timely if filed on the following Monday, April 17, 2017. (Cal. Code Regs., tit. 18, § 18566.)

² The time for filing claims for refund for the 2016 tax year for individuals in California (as well as federal) was postponed to May 17, 2021, in a response to the COVID-19 pandemic. However, since appellant’s claim for refund for the 2016 tax year was filed on July 7, 2021, it is nevertheless barred by the postponed statute of limitations for the 2016 tax year, as discussed herein.

HOLDING

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:



2D8DE82EB65E4A6...
Elliott Scott Ewing

Administrative Law Judge

We concur:

DocuSigned by:



67F043D63EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:



6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 6/10/2022