

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. FANG AND
Y. LIANG

) OTA Case No. 21119164
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OPINION

Representing the Parties:

For Appellants: J. Fang and Y. Liang

For Respondent: David Hunter, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Fang and Y. Liang (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$21,645 for the 2015 taxable year.

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

ISSUE

Are appellants entitled to a refund for withholding credits received by FTB for taxable year 2015?

FACTUAL FINDINGS

1. Appellants filed a timely 2015 California Resident Income Tax Return on April 7, 2016, claiming wage withholding credits of \$6,413.
2. Appellants sold California real property in 2015. On December 3, 2015, Old Republic Exchange sent appellants an FTB Form 593, Real Estate Withholding Tax Statement (Form 593) along with an email explaining that \$21,645 would be withheld from the sales proceeds and remitted to FTB. Appellants did not claim the \$21,645 withholding credits on their return.

3. On January 24, 2020, FTB sent a letter to appellants which stated that “[FTB’s] records indicate you may have \$21,645.00 of nonwage withholding credits available for the above account on tax year 2015. It appears you did not claim these credits on your California income tax return.” The letter further instructed appellants to file an amended 2015 tax return to claim the nonwage withholding credits. The letter also detailed the statutory deadlines for filing the amended return prior to expiration of the statute of limitations.
4. According to FTB’s records, appellants contacted FTB on January 30, 2020, and stated that they would file the amended return to claim the nonwage withholding credits.
5. Appellants filed an amended California tax return for taxable year 2015 on April 15, 2021, claiming a refund of \$21,645.
6. FTB denied appellants’ claim for refund due to the expiration of the statute of limitations. 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).) On March 30, 2020, FTB published guidance postponing the deadline for filing a timely claim for refund to July 15, 2020, when the deadline would otherwise have expired between March 12, 2020, and July 15, 2020 (postponement period).¹ The taxpayer has the burden of proof to show 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]; *Appeal of Benemi Partners, LP*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners*,

¹ See FTB Notice 2020-02 (March 30, 2020), available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notice/2020-02.pdf>.

LP, supra.) 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.*) The U.S. Supreme Court has found this to be true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, as here, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Khan*, 2020-OTA-126P.)

On April 15, 2021, appellants filed their amended return for the 2015 taxable year. R&TC section 19306(a)’s first four-year statute of limitations does not apply because appellants did not file their return within the extended due date; rather, they filed prior to the original due date. The second four-year statute of limitations to file a timely claim for refund would have expired on April 15, 2020, during the postponement period, which postponed the deadline to file a claim for refund to July 15, 2020. Appellants filed their amended return after the postponement period expired. Pursuant to the one-year statute of limitations, the time to claim appellants’ refund expired on April 15, 2017, one year after the withholding credits were deemed paid to FTB.²

Appellants assert that they were told by an FTB representative that there was no limit on the time to file an amended return. Appellants believed that “tax returns should be kept for five years,” and that the pandemic “makes all things slow.”

FTB contends that there is nothing in the notes of the January 30, 2020 phone conversation to indicate that appellants were given advice on timelines either for filing an amended return or regarding the statute of limitations. FTB further states that there is no reasonable cause exception to the statute of limitations, and that appellants should have followed the written advice contained in its letter sent to appellants on January 24, 2020, and not on claimed oral advice.

The record here does not reflect that FTB gave appellants any advice with respect to the statute of limitations other than what was written in the January 24, 2020 letter, namely, that appellants must file their amended tax return within four years from the tax return's original due date, four years from the date the return was filed if filed within the extended due date, or one

² It is not clear from the record when Old Republic Exchange paid the withheld funds to FTB. However, the date Form 593 was filed or when the withholding was credited to appellants’ tax account are irrelevant under R&TC section 19002(c)(1). (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) “For purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return.” (Cal. Code Regs., tit. 18, § 19002(d)(1).)

year from the date of the withholding payment, which FTB stated was deemed to be the return due date. Moreover, even if appellants were given incorrect advice, taxpayers must follow the law itself, not oral advice. Instead, taxpayers may only rely on authoritative sources of law which are the statutes, regulations, and judicial decisions, not informal advice by the tax agency. (*Appeal of Dandridge*, 2019-OTA-458P.)


For the foregoing reasons, appellants’ claim for refund must be denied.

HOLDING

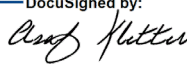
Appellants are not entitled to a refund for withholding credits received by FTB for taxable year 2015.


DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 6/10/2022