

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**W. HARB AND
A. HARB**) OTA Case No. 21108747
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)
)**OPINION**

Representing the Parties:

For Appellants:

Richard B. Donahue, CPA

For Respondent:

David Hunter, Tax Counsel IV

For Office of Tax Appeals:

Nguyen Dang, Tax Counsel III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Harb and A. Harb (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' refund claim of \$3,640 for the 2016 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals Administrative Law Judge Andrew J. Kwee held an oral hearing for this matter electronically, on May 31, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants' 2016 refund claim was timely.

FACTUAL FINDINGS

1. Appellants did not timely file a 2016 California income tax return.
2. On February 12, 2021, respondent notified appellants that they had a \$7,707 withholding credit and that no return had been received by respondent for the 2016 tax year.

3. On August 27, 2021, appellants filed a joint 2016 California Nonresident or Part-Year Resident Income Tax Return (Return) reporting a \$3,640 overpayment which respondent also treated as a refund claim.
4. Respondent agrees that there was a \$3,460 overpayment for the 2016 tax year.
5. Respondent accepted the Return as filed but did not issue a refund to appellants because it determined that the statute of limitations for making a refund claim for the 2016 tax year had expired on May 17, 2021, and therefore, appellants' refund claim was untimely.¹
6. This timely appeal followed.

DISCUSSION

R&TC section 19306 sets forth the general statute of limitations for filing a refund claim, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment.

Appellants do not dispute that the Return was filed after the timeframe set forth in the general statute of limitations for filing a refund claim had lapsed. (See R&TC, § 19306.) Instead, appellants argue that they should be refunded their 2016 overpayment because they acted in good faith to file the Return by the required deadline. Specifically, appellants allege that, prior to receiving a letter from respondent on February 12, 2021, they were unaware they had a withholding credit or California source-income for the 2016 tax year. Appellants contend that prior to February 12, 2021, they did not receive a Schedule K-1 from the partnership entity which had generated the flow-through income and paid these withholdings on appellant-husband's behalf. Appellants contend they contacted this partnership promptly after receiving respondent's February 12, 2021 notice, and timely furnished the necessary paperwork to their tax preparer.

During the oral hearing, appellants' tax return preparer (accountant) explained that appellants timely mailed the required documentation (a Schedule K-1) to one of the accountant's offices. However, the accountant's firm maintains two business offices. Due to the COVID-19 pandemic, appellants' accountant was only physically working at one office (the first office), and a different firm employee worked at the other office (the second office). Although appellants'

¹ Due to the COVID-19 pandemic, respondent extended the four-year statute of limitations for making a refund claim for the 2016 tax year by one month, from April 15, 2021, to May 17, 2021.

Schedule K-1 was physically mailed to appellant's second office, due to an inadvertent oversight the second office did not transmit the Schedule K-1 to the first office and, as such, the timely filing of appellant's refund claim was overlooked. As soon as appellants' tax preparer discovered the oversight in August 2021, the preparer promptly filed the refund claim. Unfortunately, appellants' preparer did not discover the oversight until after the period to timely file a claim for refund had lapsed. Respondent does not dispute any of these contentions raised by appellant.

We infer from appellants' position that they seek a suspension of the statute of limitations until the time the Return was filed. However, we note that there is no reasonable cause or equitable basis for suspending the statute of limitations for making a refund claim under these facts. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P [“taxpayer’s untimely filing of a claim for *any reason* bars a refund” emphasis added]; but see R&TC, § 19316 [providing a narrow exception for suspending the statute of limitations where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months].) “Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted.” (*Appeal of Benemi Partners, L.P., supra.*)

Accordingly, because appellants did not file the Return within the periods set forth in R&TC section 19306, we find respondent properly denied appellants' refund claim.

HOLDING

Appellants' 2016 refund claim was untimely.

DISPOSITION

Respondent's action is sustained.

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 7/26/2022