

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

In the Matter of the Appeal of:

**L. KIMBLE**) OTA Case No. 21119061  
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)  
)**OPINION**

Representing the Parties:

For Appellant:

Arlene M. Stratton, Representative

For Respondent:

Alisa L. Pinarbasi, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Kimble (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$30,805.51<sup>1</sup> for the 2014 tax year.

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

**ISSUE**

Whether the statute of limitations bars appellant's claim for refund for the 2014 tax year.

**FACTUAL FINDINGS**

1. Appellant untimely filed his 2014 California Resident Income Tax Return on December 5, 2016. Appellant reported a total tax liability of \$46,254, estimated tax payments of \$30,000, and tax due of \$16,254. Appellant did not include any payment with the return.
2. Respondent accepted appellant's 2014 original return and issued a Notice of State Income Tax Due on December 19, 2016, which notified appellant that he had a balance due of the

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<sup>1</sup> While appellant's amended return requested a refund of \$19,155.00, appellant actually had a total overpayment of \$30,805.51 (\$30,000.00 + \$11,605.51 - \$10,845.00) on his 2014 tax year account following respondent's acceptance of the 2014 amended return. Therefore, the total claim for refund in this appeal is \$30,805.51.

- originally reported tax due of \$16,254.00, a late-filing penalty of \$4,063.50, and interest of \$1,049.91. This resulted in a total balance due of \$21,367.41.
3. Appellant subsequently made the following payments: \$3,050.59 on September 15, 2017; \$2,438.65 on January 15, 2018; and \$3,561.10 on March 15, 2018. In addition, respondent transferred \$2,600.17 from appellant's 2019 tax year to appellant's 2014 tax year account on June 15, 2018.
  4. On September 15, 2020, appellant filed a 2014 California Amended Individual Income Tax Return in which appellant reported a tax liability of \$10,845, estimated tax payments of \$30,000, and requested a refund of \$19,155. Respondent accepted the amended return as filed and treated it as a claim for refund for the 2014 tax year.
  5. Respondent denied appellant's claim for refund because it was filed after the statute of limitations had expired.
  6. This timely appeal followed.

#### DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 the overpayment. 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 dispute that appellant did not file a timely 2014 California income tax return. As a result, the first four-year statute of limitations is not applicable to this appeal. The second four-year statute of limitations date was April 15, 2019, and there is no dispute that appellant filed his claim for refund on September 15, 2020. Accordingly, appellant's claim for refund was not timely for the second four-year statute of limitations. Lastly, appellant's September 15, 2020 claim for refund was not filed within one year from any of his payments made during the period of September 15, 2017, through June 15, 2018. Therefore, appellant's claim for refund was not filed within any of the applicable statute of limitations and is untimely.

Appellant argues that he should be entitled to equitable tolling of the statute of limitations because he relied upon his sister, who had no tax or accounting experience, to prepare his 2014

California income tax return. However, apart from very limited situations,<sup>2</sup> there is no tolling of the statute of limitations. (See *United States v. Brockamp* (1997) 519 U.S. 347.) Furthermore, 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. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is 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.) Such 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 Khan*, 2020-OTA-126P.) As a result, appellant's argument is unpersuasive.<sup>3</sup> Therefore, appellant has not established that he is entitled to a refund of any overpayment amounts for the 2014 tax year.

#### HOLDING

The statute of limitations bars appellant's claim for refund for the 2014 tax year.

#### DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained.

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*Daniel Cho*

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Daniel K. Cho

Administrative Law Judge

We concur:

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*Cheryl L. Akin*

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Cheryl L. Akin

Administrative Law Judge

DocuSigned by:

*Kenneth Gast*

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Kenneth Gast

Administrative Law Judge

Date Issued: 6/27/2022

<sup>2</sup> R&TC sections 19322.1 and 19316 provide certain situations in which the statute of limitations can be extended; however, neither of these two situations are applicable to this appeal.

<sup>3</sup> Appellant also requested that the overpayment be credited to appellant's tax liabilities for subsequent tax years. However, before the claimed overpayment can be credited to a different tax year, appellant must first file a timely claim for refund or credit before the expiration of the applicable statute of limitations, which he did not. (See R&TC, § 19306(a).) Therefore, this argument is moot.