

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. DONAHOO

) OTA Case No. 21119097
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OPINION

Representing the Parties:

For Appellant: J. Donahoo

For Respondent: Brian C. Miller, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Donahoo (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,753.43 for the 2013 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 for the 2013 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California income tax return.
2. Subsequently, FTB received information indicating that appellant received income sufficient to trigger the filing requirement. On March 11, 2015, FTB issued a Demand for Tax Return demanding that appellant file a return, show that a return had already been filed, or explain why she did not have a filing requirement by April 15, 2015.
3. Appellant did not respond to FTB’s demand.
4. On May 11, 2015, FTB issued a notice of proposed assessment (NPA) for tax of \$3,948. FTB also applied a late filing penalty of \$987, a demand penalty of \$987, a filing

- enforcement fee of \$76, and accrued interest. FTB also sent an Income Tax Due Notice on September 22, 2015, notifying appellant of the liability.
5. FTB received payments on June 14, 2016, August 22, 2016, and January 3, 2017, which satisfied appellant's 2013 tax liability.
 6. On September 21, 2021, appellant filed a California resident income tax return (Form 540) reporting tax of \$930. FTB treated appellant's return as a claim for refund.
 7. On October 4, 2021, FTB issued a letter informing appellant that her return was accepted and that her account showed an overpayment in the amount of \$5,735.43. FTB informed appellant that the claim for refund was barred by the statute of limitations.
 8. 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 relevant 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that the claim for refund is timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant makes no specific contentions with respect to her claim for refund. Appellant did not file a 2013 return until September 4, 2021, which is more than four years after the April 15, 2014 due date. As such, appellant may only receive a refund if her claim was made within one year from the date of overpayment. In this case, appellant's final payment was made on January 3, 2017. As such, the latest that appellant could have filed her claim for refund of any amount was April 15, 2018. As appellant did not file a claim until after April 15, 2018, appellant's claim was barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2013 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s denial of appellant’s claim for refund for the 2013 tax year is sustained.

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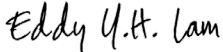


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Keith T. Long
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/15/2022