

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. KOTTER

) OTA Case No. 22019397
)
)
)
)

OPINION

Representing the Parties:

For Appellant:

J. Kotter

For Respondent:

Leoangelo C. Cristobal, Tax Counsel

For Office of Tax Appeals:

Westley Marcelo, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Kotter (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$795 for the 2015 tax year and \$1,154 for the 2016 tax year.

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

ISSUE

Whether appellant’s claims for refund for tax years 2015 and 2016 are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant untimely filed a 2015 tax return on October 7, 2021, reporting a total tax of \$384 and income tax withholdings of \$1,179, resulting in an overpayment and refund amount due of \$795.

2. Appellant untimely filed a 2016 tax return on September 3, 2021, reporting a total tax of \$134 and income tax withholdings of \$1,288, resulting in an overpayment and refund amount due of \$1,154.
3. Respondent processed appellant's 2015 and 2016 tax returns and denied appellant's claims for refund for both tax years because appellant did not file her returns before the statute of limitations expired.
4. This timely appeal followed.

DISCUSSION

R&TC 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 filed by the extended due date; (2) four years from the due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. In an action for refund, the taxpayer has the burden of proof to show entitlement to a refund by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Beyond narrow exception not relevant here,¹ a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the administrative clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-197P.)

Here, respondent received appellant's 2015 tax return on October 7, 2021, and 2016 tax return on September 3, 2021, and treated both returns as refund claims. Since neither return was timely filed pursuant to an extension, the four-year statute of limitations required the returns to be filed four years from the original due date of the return. As a result, appellant's 2015 tax return had a refund claim deadline of April 15, 2020. Appellant's 2016 tax return had a

¹ R&TC section 19316 provides a narrow exception for suspending the statute of limitation where a taxpayer is deemed "financially disabled." A financially disabled taxpayer is unable to manage personal financial affairs by reason of medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1).)

refund claim deadline of April 15, 2021, which was later postponed to May 17, 2021.² Appellant solely made tax withholding payments in 2015 and 2016, which were deemed to be paid on the due date for each tax return, pursuant to R&TC section 19002(c)(1). Therefore, the one-year statute of limitations to claim a refund for the 2015 tax year expired on April 15, 2017, and for the 2016 tax year on April 15, 2018.

Appellant does not dispute that the refund claims were untimely filed. Appellant instead argues that the 2015 and 2016 tax returns could not be timely filed due to a series of unfortunate events and delays. Following the passing of appellant's initial CPA, pertinent tax journals and receipts could not be retrieved until June 2017. In August 2017, appellant's subsequent CPA was arrested on unrelated criminal charges before he could prepare the tax returns and did not return appellant's tax documents until late 2019, shortly before the COVID-19 pandemic began. Appellant asserts that restrictions to in-person business meetings at the outset of the pandemic caused further delays, but appellant was able to work with new tax preparers in 2021 once business restrictions began to relax. Appellant seeks refund claims based on these events.

Under these facts, appellant has provided an equitable argument to claim refunds outside of the statutory periods set forth in R&TC section 19306. However, notwithstanding the delays beyond appellant's control, there is no authority to waive the statute of limitations based on reasonable cause or equitable basis. (*Appeal of Benemi Partners, L.P., supra.*) Accordingly, because appellant did not timely file either refund claim within the statute of limitations, respondent properly denied appellant's refund claims.

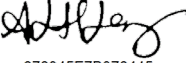
² Although the statute of limitations for a claim for refund is strictly construed under R&TC section 19306, respondent postponed the deadline for claiming 2016 refunds to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; Franchise Tax Board, *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

HOLDING

Appellant’s claims for refunds for the 2015 and 2016 tax years are barred by the statute of limitations.

DISPOSITION

Respondent’s action denying appellant’s claims for refund is sustained.

DocuSigned by:

272945E7B372445...

Andrea L.H. Long
Administrative Law Judge

Date Issued: 8/8/2022