

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
T. CANNON

) OTA Case No. 21088504
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OPINION

Representing the Parties:

For Appellant: T. Cannon

For Respondent: Camille Dixon, Tax Counsel

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Cannon (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,612.08 for the 2015 tax year.

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

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. On April 15, 2016, appellant timely filed her 2015 Resident California Income Tax Return (2015 tax return). On the return, appellant reported California taxable income, an exemption credit, no withholding credits, and tax due of \$2,417. Appellant also reported an underpayment of estimated tax penalty.
2. Appellant did not submit a payment with her 2015 tax return.
3. FTB accepted the return as filed and imposed a late payment penalty for appellant’s failure to timely pay the 2015 tax year liability.

4. Between May 16, 2016, and May 9, 2018, FTB received payments from appellant for the 2015 tax year through an installment agreement.
5. On May 16, 2017, appellant called FTB regarding unreported withholding credits on her 2015 tax return. FTB advised appellant to submit an amended tax return.
6. Appellant states that FTB sent her incorrect forms in 2020 to amend her 2015 tax return and that she never received the correct forms despite her subsequent request.
7. On March 15, 2021, appellant filed an amended 2015 tax return to claim the unreported California income tax withholding credits.
8. FTB treated the amended return as a claim for refund and reduced appellant's late payment penalty and related interest.
9. On August 24, 2021, FTB issued a notice denying the claim for refund of \$1,612.08 explaining its position that appellant failed to submit her claim for refund before the statute of limitations expired.
10. 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 overpayment. (R&TC, § 19306(a).) R&TC section 19322 provides that every refund claim shall be in writing, signed by the taxpayer or her representative, and shall state the specific grounds. A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.) 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, through July 15, 2020 (Postponement Period).¹

The law does not provide for the waiver of the statute of limitations period based on reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the

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

taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first instance. (*Appeal of Benemi Partners, L.P., supra.*) Such fixed deadlines may appear harsh because they can be missed, but the occasional resulting harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

Here, appellant timely filed her 2015 California Resident Income Tax Return on April 15, 2016. On May 16, 2017, appellant called FTB regarding unreported withholding credits on her 2015 tax return. FTB advised appellant to submit an amended return.² The four-year statute of limitations to file a claim for refund expired on April 15, 2020. FTB Notice 2020-02, however, considers a claim for refund that would have expired within the Postponement Period as timely, if such claim was filed on or before July 15, 2020. Appellant filed her claim for refund on March 15, 2021 (eight months after July 15, 2020). Accordingly, appellant's claim for refund is untimely.

Appellant asserts that she received incorrect forms from FTB in 2020 to amend her 2015 tax return and that she never received the correct forms upon a subsequent request, which prevented her from filing a timely claim for refund.³ However, exceptions are not granted even on equitable bases or for reasonable cause. (*Appeal of Benemi Partners, supra.*) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund. (*Ibid.*; *U.S. v. Dalm* (1990) 494 U.S. 596, 602.⁴)⁵ Ignorance of the law is not reasonable cause for the failure to comply with statutory requirements. (*Appeal of Cremel and Koeppele*, 2021-OTA-222P.) For these reasons, OTA finds that appellant's claim for refund for the 2015 tax year is barred by the statute of limitations.

² The telephone call cannot be considered a claim for refund as it does not meet the requirements of R&TC section 19322.

³ It appears that, on May 16, 2017, appellant was informed and advised by FTB regarding submission of an amended tax return for the 2015 tax year.

⁴ In *U.S. v. Dalm, supra*, the United States Supreme Court held that the taxpayer was not entitled to a refund for taxes, which she ultimately did not owe, because her claim for refund was untimely filed. That case arose under Internal Revenue Code section 6511(a), to which R&TC section 19306 (statute of limitations) is analogous.

⁵ Though not applicable here, financial disability due to medically determined physical or mental impairment is an example of an exception. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

HOLDING

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

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:
E. S. Ewing
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Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 6/28/2022