

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220310015
K. ALBRECHT AND)
C. ALBRECHT)
_____)

OPINION

Representing the Parties:

For Appellants: K. Albrecht and C. Albrecht
For Respondent: Leoangelo C. Cristobal, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Albrecht and C. Albrecht (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,218.78 for the 2014 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.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants’ claim for refund for the 2014 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On October 13, 2015, appellants filed a timely California income tax return for the 2014 tax year, within the extension period. Appellants reported tax due of \$7,994 which was paid with the return.
2. On January 15, 2022, appellants filed an amended 2014 income tax return claiming a net operating loss carryback from the 2019 tax year. Appellants claimed a refund of \$2,026.

3. On February 22, 2022, FTB issued a letter informing appellants that the claim for refund was barred by the statute of limitations.
4. 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 limitation 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.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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. (*Ibid.*) 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.)

Here, there is no dispute that appellants filed a timely return for the 2014 tax year on October 13, 2015. Appellants' claim for refund was filed on January 15, 2022, which is more than four years after the date that appellants filed the return and more than one year after the date appellants paid the tax. (R&TC, § 19306(a).) While appellants reported that the amended return was pursuant to net operating loss (NOL) carrybacks and following their filing activity at the federal level, the controlling law in this case is the statute of limitations to file a claim for refund


in California as provided for in R&TC section 19306.¹ Under that statute, appellants' claim for refund for the 2014 tax year is barred by the statute of limitations.

HOLDING

Appellants' claim for refund for the 2014 tax year is barred by the statute of limitations.

DISPOSITION

FTB's denial of appellants' claim for refund for the 2014 tax year is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 8/31/2022

¹ For federal tax law purposes, the Internal Revenue Code (IRC) requires an NOL for the 2019 taxable year to be carried back to each of the preceding five taxable years. (See IRC § 172(b)(1)(D).) However, R&TC section 17276(c)(1) provides that NOL carrybacks are not allowed for California tax law purposes for losses attributable to the 2019 taxable year. Thus, even though appellants may have been allowed to file a federal return to claim a NOL carryback from 2019, there is no such allowance under California law.