

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22029703
A. CRAIG)
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OPINION

Representing the Parties:

For Appellant: A. Craig
For Respondent: Nancy E. Parker, Tax Counsel IV
For Office of Tax Appeals: Michelle Huh, Tax Counsel

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Craig (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,940.86 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 claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Because appellant earned sufficient income but did not file a 2016 California income tax return, FTB issued a Demand for Tax Return (Demand) on April 5, 2018.
2. When appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) on June 4, 2018. The NPA estimated appellant’s income and proposed to assess tax (after application of withholding credits) of \$1,542.00, a late-filing penalty of \$385.50, a notice and demand penalty of \$697.50, and a filing enforcement fee

- of \$84.00, plus applicable interest. The NPA became final when appellant did not protest by August 3, 2018.
3. On September 4, 2018, FTB sent appellant a Notice of State Income Tax Due for the 2016 tax year. Appellant was already enrolled in a provisional payment plan with FTB for the 2015 tax year, but his failure to pay the amount in the 2016 Notice of State Income Tax Due caused him to default on the payment plan and FTB canceled that payment plan on October 22, 2018.
 4. On December 12, 2018, FTB sent appellant a Final Notice Before Levy and Lien for the 2015 and 2016 tax years.
 5. On February 11, 2019, FTB issued a Personal Income Tax Earnings Withholding Order for Taxes to four of appellant's employers for the 2015 and 2016 tax years. FTB received payments from the withholding order totaling \$1,725.56: \$641.92 on April 3, 2019; \$659.19 on April 17, 2019; and \$424.45 on May 6, 2019. FTB also applied a payment of \$1,490.30 from appellant's 2018 tax year to his 2016 tax year account on April 3, 2019.
 6. On June 15, 2021, appellant filed a 2016 California income tax return, reporting tax of \$620 that was fully offset by exemption credits, income tax withholding of \$1,042, and a requested refund of \$1,042. FTB accepted the return as filed.
 7. FTB treated appellant's 2016 return as a claim for refund but increased the overpayment to \$3,940.86, computed as follows: withholding of \$1,042; plus collected payments of \$1,725.56; plus the 2018 tax year transfer payment of \$1,490.30; minus a collection cost recovery fee of \$317.00. FTB denied the claim as untimely. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall 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 under 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. 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.)

Here, appellant’s untimely filed 2016 return had an original due date of April 15, 2017, and he had until May 17, 2021, to file a timely refund claim.¹ However, appellant did not submit a timely refund claim because he filed his 2016 return on June 15, 2021, which was after the May 17, 2021 extended deadline. Thus, appellant is barred under the four-year statute of limitations from obtaining a refund.

As for the one-year statute of limitations, appellant’s last payment date for the 2016 tax year was May 6, 2019. One year from that date was May 6, 2020. Therefore, appellant is likewise barred under the one-year statute of limitations because his refund claim was not filed until June 15, 2021.

Appellant does not disagree with this conclusion. Rather, he contends when he filed his 2016 California return, he received a notification via email from H&R Block, a tax return preparation company, that his 2016 California return had been submitted and completed by e-file. Appellant further contends that he was not aware that his 2016 California return was rejected until 2021, when he realized that the “AGI PIN” was causing the rejection of his e-filed tax returns for the past five years. Appellant also contends that the COVID-19 pandemic created some difficulties in refiling his tax returns and he was advised to refile all the rejected returns with the IRS and FTB.

However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) Aside from narrow statutory exceptions not relevant here, 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. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Thus, because appellant did not submit a timely refund claim for the 2016 tax year, he is not entitled to a refund.

¹ FTB postponed the deadline for claiming 2016 refunds to May 17, 2021, due to the COVID-19 pandemic. (See *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, April 26, 2021, available at: <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 claim for refund is barred by the statute of limitations.

DISPOSITION

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

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 10/5/2022