

**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 22029788
<b>H. LO</b>	)	
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**OPINION**

Representing the Parties:

For Appellant: H. Lo

For Respondent: Cheyanna L. Jaffke, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Lo (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$10,330 for the 2014 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 is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant filed his 2014 return approximately seven years late on January 15, 2022.
2. Because appellant had failed to file a return, in 2020, respondent intercepted three payments from appellant’s unclaimed property funds totaling \$10,431 and applied it to appellant’s 2014 tax year.<sup>1</sup> The last payment was intercepted on October 5, 2020.
3. Appellant’s 2014 return reported \$0 total tax and requested a refund of \$185; therefore, respondent treated the return as a claim for refund, which respondent subsequently denied.

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<sup>1</sup> Respondent intercepted \$10,002.48 and \$226.10 on September 28, 2020, and \$202.42 on October 5, 2020. The intercepted amounts total \$10,431.00, but appellant’s claim for refund states that it is for \$10,330.00.

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 limitations provides, in pertinent part, that no 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 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).) 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.)

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.<sup>2</sup> (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Appellant asserts that the claim for refund should be granted because he did not owe a tax liability for the 2014 tax year and the genesis of the outstanding credits in his account for the 2014 tax year were not from events or overpayments for that tax year. Appellant's claim for refund is barred under the statute of limitations set forth in R&TC section 19306.<sup>3</sup> Appellant's 2014 return was originally due on April 15, 2015, and therefore the second four-year statute of limitations expired on April 15, 2019. The one-year statute of limitations expired on October 5, 2021, which was one year from October 5, 2020, the effective date of appellant's last

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<sup>2</sup> There is a narrow exception where the statute of limitations provisions do not apply to the return of payments that: (1) exceed what respondent is legally allowed to collect (2) and were the result of an "overcollection." However, such exception does not apply in this appeal and appellant did not raise such issue. (Franchise Tax Board Technical Advice Memo. 2007-01 (Apr. 23, 2007).)

<sup>3</sup> The first four-year statute of limitations does not apply because appellant filed his 2014 return well beyond the due date, including the extension period, to file his return.

payment as intercepted by respondent. However, appellant did not file his return and claim for refund until January 15, 2022, well beyond the expiration of both the four-year and one-year limitations periods.

As noted above, there is no reasonable cause or equitable exception to the statute of limitations. Thus, appellant’s claim for refund is barred by the statute of limitations, even though the return indicates that no tax was due. (*U.S. v. Dalm, supra.*)

HOLDING

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

DISPOSITION

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

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*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Eddy Y.H. Lam*  
1EAB8BD43324477...  
Eddy Y.H. Lam  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 10/5/2022