

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
P. CARNAHAN

) OTA Case No. 22039954
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OPINION

Representing the Parties:

For Appellant: P. Carnahan

For Respondent: Peter Kwok, Tax Counsel IV

M.GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Carnahan (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,362 for the 2016 tax year.

Appellant has elected to have this appeal determined pursuant to the procedures of the Small Case Program, including the assignment of a single administrative law judge and this Opinion’s ineligibility for precedential consideration.¹ This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUES

Is appellant’s claim for refund for the 2016 tax year barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant timely filed a 2016 California Resident Income Tax Return on April 11, 2017, reporting no California adjustments to appellant’s federal adjusted gross income, which included Social Security retirement benefits. Appellant reported an overpayment of tax of \$1,482 and received a refund in that amount.
2. On December 24, 2021, appellant filed an amended 2016 return, claiming a California adjustment for Social Security retirement benefits received and requesting an additional

¹ The provisions of the Small Case Program are found at California Code of Regulations, title 18, section 30209.1, effective March 1, 2021.

- refund of \$2,362.² Respondent treated the amended return as a claim for refund.
3. On January 31, 2022, respondent denied the claim for refund on the ground that it was barred by the statute of limitations.
 4. This timely appeal followed.

DISCUSSION

Generally, overpayments of income tax may be credited against any amount then due from the taxpayer, and respondent must refund the balance to the taxpayer. (R&TC, § 19301(a).) However, the right to a refund is not without limitation. As relevant here, a credit or refund *cannot be allowed* unless a claim is filed within the time prescribed by R&TC section 19306. Section 19306 states that, to be timely, a claim must be filed within whichever of the following time periods expires last: (1) four years from the date the return was filed, if filed within an extension allowed by R&TC, §§ 18567 or 18604; (2) four years from the last day prescribed for filing the return without regard to any such extension; or (3) one year from the date of the overpayment. (R&TC, § 19306(a).) Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such harsh result to be an acceptable consequence of having an important obligation – and the consequences of failing to fulfill that obligation – clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

Appellant contends the statute of limitations should not bar the claim. It is undisputed that appellant did not file the claim for refund within any of the periods described in R&TC section 19306. To be timely, the claim had to be filed by May 17, 2021.³ Appellant did not file the claim until over seven months later. Appellant argues that respondent should have informed appellant regarding the allowed California adjustment for Social Security retirement benefits, that the statute of limitations should not apply because there is no similar limitation on

² The \$2,362 overpayment was the result of appellant's failure to claim a California adjustment for Social Security retirement benefits included in appellant's federal adjusted gross income. Such benefits are not subject to California income tax.

³ As an accommodation to individuals who might have found it difficult to meet filing deadlines due to COVID-19, if the statute of limitations to file a timely claim for refund normally expired on April 15, 2021, respondent considered the claim timely if the individual taxpayer filed the claim on or before May 17, 2021.

respondent's ability to assess additional tax, and that the COVID-19 pandemic and a particularly bad reaction to a COVID-19 vaccine combined to cause appellant to be distressed and distracted.

Respondent is not required to examine taxpayers' returns for possible missed deductions or adjustments. That is the responsibility of each taxpayer, and there are innumerable aids available to help taxpayers correctly complete their tax returns, including tax professionals, tax preparation software, and assistance available through respondent. In this case, the instructions for the schedule on which appellant should have subtracted the social security retirement benefits specifically state that California does not include those benefits in taxable income, and they instruct the taxpayer to subtract them.

Appellant is mistaken that statutes of limitation are used by respondent but cannot be used against it. In fact, except when a taxpayer files a false or fraudulent return, and under a few other, uncommon circumstances, respondent must issue a notice of proposed deficiency assessment within four years after the taxpayer files the tax return. (R&TC, § 19057(a).)

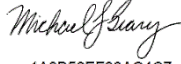
Finally, COVID-19 was not declared a pandemic until years after appellant filed the original tax return; and while the pandemic was stressful and disruptive to the lives of many, there is no evidence here that appellant was unable to file a timely claim for refund. Appellant simply was not aware of the error on the original tax return until it was too late, or appellant did not act promptly when appellant learned of the error. Ignorance or a misunderstanding of the law generally does not excuse a failure to comply (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P), and R&TC section 19306 effectively prevented respondent from granting the late claim. As unfair as this will undoubtedly appear to appellant, respondent did what the law required it to do.

HOLDINGS

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

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

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Michael F. Geary
Administrative Law Judge

Date Issued: 10/10/2022