

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. PARKS

) OTA Case No. 220410142
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OPINION

Representing the Parties:

For Appellant: D. Parks
For Respondent: Paige Chang, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Parks (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$6,013.60 for the 2015 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 for the 2015 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely 2015 California income tax return.
2. On May 2, 2017, respondent issued a Demand for Tax Return (Demand) based on information that appellant received sufficient income to trigger the filing requirement. The Demand gave appellant until June 7, 2017, to file a return or explain why no return was required. Appellant did not respond to the Demand.
3. On July 3, 2017, respondent issued a Notice of Proposed Assessment (NPA) based on an estimate of income, which proposed to assess tax of \$3,610.00, a late filing penalty of

- \$902.50, a demand penalty of \$902.50, a filing enforcement fee of \$84.00, and accrued interest. Since appellant did not respond to the NPA, respondent sent collection notices on October 2, 2017, December 1, 2017, and March 7, 2018.
4. Respondent received payments on May 14, 2018, September 15, 2018, and December 3, 2018, satisfying the liability.
 5. On December 10, 2021, appellant filed an untimely return for the 2015 tax year, reporting tax of \$75. After applying exemption credits of \$218, appellant reported zero tax for 2015.
 6. Respondent accepted appellant's return and processed it as a claim for refund of \$6,013.60. By letter dated January 10, 2022, respondent denied appellant's claim for refund.
 7. 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 they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, there is no dispute that appellant failed to file a timely return pursuant to an extension of time to file. Appellant's claim for refund for 2015 was filed on December 10, 2021, which is more than one year after the claimed overpayments and more than four years after the due date of the return. As such, appellant's claim for refund is barred by the statute of limitations unless an exception applies.

Appellant requests that she be allowed a refund in spite of the statute of limitations due to her age and fixed income. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*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.) Consequently, appellant’s claim for refund for 2015 is barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2015 tax year is barred by the statute of limitations.

DISPOSITION

Respondent’s denial of appellant’s claim for refund for the 2015 tax year is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Michael F. Geary
Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 10/18/2022