

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. AGUILAR

) OTA Case No. 220410266
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OPINION

Representing the Parties:

For Appellant: J. Aguilar

For Respondent: Eric R. Brown, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Aguilar (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,466 for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Whether the statute of limitations bars appellant from claiming a \$2,466 credit or refund for the 2016 tax year.

FACTUAL FINDINGS

1. FTB obtained information that appellant held an active real estate license from the Department of Real Estate but had not filed a 2016 California individual income tax return. On May 1, 2018, FTB issued a Demand for Tax Return to appellant and requested that appellant respond by June 6, 2018. Appellant did not respond.
2. On July 2, 2018, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2016 tax year, proposing tax of \$3,385.00, a late filing penalty of \$846.25, a notice and demand penalty of \$846.25, and an \$84.00 filing enforcement cost recovery fee, plus interest. Appellant did not protest the NPA, and it went final.

3. Between April 15, 2019, and December 28, 2020, pursuant to provisional payment plans with FTB, appellant made \$2,500.00 in payments. Between January 10, 2021, and January 10, 2022, appellant made payments totaling \$1,950.00 and was credited \$1.43 in interest.
4. On January 10, 2022, appellant filed his 2016 California Resident Income Tax Return, reporting no tax due. FTB accepted the return as filed, which it treated as a claim for refund for the 2016 tax year.¹
5. By letter dated January 25, 2022, FTB allowed \$1,822.47 as a refund or credit, but denied the remainder of appellant's claim for refund of \$2,466. Separately from the letter, FTB transferred \$128.96 from the 2016 tax year to the 2017 tax year to satisfy appellant's tax liability for that year.
6. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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. 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.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Morosky*, 2019-OTA-312P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347, 351.) 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

¹ Appellant did not include the payments he made through the provisional payment plan on his return. FTB determined that appellant was requesting a full refund or credit of all amounts paid.

occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Appellant does not contest – and OTA finds no error in – FTB’s determination that appellant’s claim for refund was untimely under the four-year statute of limitations. Under the one-year statute of limitations, in the year prior to filing his 2016 California tax return, which FTB treated as appellant’s refund claim, appellant’s payments and credits totaled \$1,951.43. FTB refunded \$1,822.47 and credited \$128.96 to appellant’s 2017 tax year, and these amounts equal the \$1,951.43. The remainder of appellant’s payments were made outside of the one-year statute of limitations. Thus, OTA finds no error in FTB’s determination under the one-year statute of limitations.

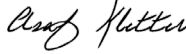
Appellant contends on appeal that a refund or credit should be allowed based on reasonable cause for the remainder of appellant’s payments (i.e., those made between April 15, 2019, and December 28, 2020, in the amount of \$2,500.00), and claims that FTB advised him that any overpayment would be refunded to appellant once he filed his 2016 California tax return. However, there is no reasonable cause basis for suspending the statute of limitations. (*U.S. v. Brockamp*, *supra*; *Appeal of Benemi Partners, L.P.*, *supra*.) Because appellant untimely filed his claim for the remainder of his payments, a credit or refund is barred, even though appellant reported zero tax owed on his 2016 California tax return. (*U.S. v. Dalm*, *supra*; *Appeal of Benemi Partners, L.P.*, *supra*.) The record here does not reflect that FTB gave appellant any advice with respect to the statute of limitations, and even if appellant was given incorrect advice, taxpayers must follow the law itself. Taxpayers may only rely on authoritative sources of law, which are the statutes, regulations, and judicial decisions, not informal advice by the tax agency. (*Appeal of Dandridge*, 2019-OTA-458P.) OTA has no authority to grant relief except where the law specifically allows. (See *Appeal of Estate of Gillespie*, *supra*; *Appeal of Benemi Partners, L.P.*, *supra*.)

HOLDING


The statute of limitations bars appellant from claiming a \$2,466 credit or refund for the 2016 tax year.


DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 10/20/2022