

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. SAMS

) OTA Case No. 21129314
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OPINION

Representing the Parties:

For Appellant:

J. Sams

For Respondent:

Noel Garcia, Tax Counsel
Nancy Parker, Tax Counsel IV

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant J. Sams appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$848.57 for the 2015 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.)

Office of Tax Appeals (OTA) Administrative Law Judge John O. Johnson held an electronic oral hearing for this matter on August 31, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file a California return for the 2015 tax year.
2. Based on information indicating that appellant had a tax obligation for the 2015 tax year, respondent took action that ultimately led to the collection of \$2,097.89 on August 15, 2018.

3. Appellant was in the process of relocating from California to Texas during the first half of 2018 and testified that he provided respondent with his Texas address in August 2018 or September 2018.
4. On October 15, 2021, appellant filed a 2015 California tax return, reporting a tax liability of \$544.
5. Respondent treated this return as a claim for refund of \$848.57, representing the difference in tax, penalties, and interest collected versus what those amounts would total after recalculations based on a total tax liability of \$544.
6. Respondent denied the claim for refund based on the expiration of the statute of limitations, and this timely appeal followed.

DISCUSSION

The taxpayer has the burden of proving entitlement to a refund and that the refund claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer who does not file a timely return must file a claim for refund by the later of four years after the original due date for the return or one year after the date of payment. (R&TC, § 19306(a).) For the 2015 tax year, the original due date of the return was in April 2016, and therefore the applicable four-year statute of limitations expired in 2020.¹ Appellant filed the claim for refund in the form of a return on October 15, 2021, after the expiration of the statute of limitations.²

Appellant requests an exception to the statute of limitations, asserting that he did not receive a notice from respondent regarding the statute of limitations. However, respondent has no duty to inform taxpayers of the time within which they may file a claim for refund. (*Appeal of Mathiessen* (85-SBE-077) 1985 WL 15856.) While fixed deadlines may appear harsh when missed, the occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Respondent's brief indicates that it sent to appellant a Demand for Tax Return on May 31, 2017, a Notice of Proposed Assessment on August 21, 2017, and subsequent notices regarding collection activity. It is unclear which

¹ The four-year statute of limitations was originally set to expire in April 2020, but respondent issued Notice 2020-02 in response to COVID-19, which allowed taxpayers to file a claim for refund for the 2015 tax year up through July 15, 2020.

² The payment at issue was made on August 15, 2018, and, accordingly, the one-year statute of limitations expired on August 15, 2019. Since this deadline is earlier than the four-year statute of limitations, it is not controlling for this analysis.

notice(s) appellant believes he did not receive and that led to the statute of limitations expiring.³ A taxpayer's failure to file a claim for refund within the statute of limitations bars him or her from later claiming a refund. (*Appeal of Estate of Gillespie, supra.*) While limited exceptions to the statute of limitations apply (e.g., financial disability or FTB Notice 2020-02), nonreceipt of respondent's notices while in the process of relocating to a new address does not fall under any exception to the statute of limitations.

HOLDING

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

DISPOSITION

Respondent's action is sustained.

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John O Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 11/2/2022

³ Appellant's appeal letter indicates he was still in California through June 2018 and relocated to Texas in July 2018. Based on this information, OTA requested respondent provide any notices it sent to appellant during the months of July 2018 and August 2018 regarding the 2015 tax year. Respondent indicated that no such notices were issued to appellant during those months.