

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
N. HARPER

) OTA Case No. 220410190
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OPINION

Representing the Parties:

For Appellant: N. Harper

For Respondent: Desiree Macedo, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Harper (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,380.75 for the 2012 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 failed to timely file his 2012 California resident income tax return.
2. FTB received information that appellant earned sufficient income to prompt a filing requirement. Therefore, FTB issued appellant a Demand for Tax Return (Demand) for the 2012 tax year, asking that appellant file his tax return, provide evidence that he already filed his tax return, or explain why he had no filing requirement for the 2012 tax year.
3. When appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) for the 2012 tax year. The NPA estimated appellant’s income, determined that appellant owed tax for the 2012 tax year, allowed a California income tax

- withholding credit of \$2,203, imposed a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest. Appellant did not timely protest the NPA, and it became final.
4. FTB initiated collection action. However, FTB did not receive any payments through its numerous collection notices for the 2012 tax year.
 5. On December 2, 2021, appellant untimely filed his 2012 tax return and claimed an overpayment of tax. FTB accepted the return as filed, but corrected the overpayment amount because of the adjusted demand penalty and the imposition of a collection cost recovery fee, reducing the overpayment to \$1,380.75. FTB treated the untimely filing of the 2012 return as a claim for refund.
 6. On March 8, 2022, FTB denied appellant's claim for refund because appellant failed to file his return claiming the refund before the statute of limitations expired.
 7. 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. (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.)

As appellant's 2012 California return was untimely filed on December 2, 2021, the first four-year statute of limitations is inapplicable. Appellant's return filed on December 2, 2021, also does not meet the second four-year statute of limitations because it expired on April 15, 2017, four years after appellant's 2012 California tax return was originally due on April 15, 2013. Lastly, appellant's only payment received for the 2012 tax year was \$2,203 in California income tax withholding. By statute, such remitted withholding is specifically deemed to have been paid on April 15, 2013, the original due date of the tax return for purposes of determining the statute of limitations. (See R&TC, § 19002(c)(1).) Since the return was filed well after April 15, 2014, the date on which the statute of limitations expired that is one year

from the effective date of appellant's 2012 withholding payment, appellant's claim for refund does not meet the one-year statute of limitations.

There is generally no reasonable cause or equitable basis for suspending the statute of limitations.¹ (See *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 (*Benemi*)). 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 (*Dalm*)). 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.)

Appellant disagrees that the statute of limitations bars his claim for refund because he earned the money subject to his refund claim and is entitled to it. However, a taxpayer's untimely filing of a claim for any reason bars a refund, even where the tax is erroneously, illegally, or wrongfully collected, or was not owed in the first place. (*Benemi, supra; Dalm, supra*, 494 U.S. at p. 602.) Therefore, appellant has not shown his claim for refund was timely filed.

¹ There are narrow exceptions where the statute of limitations provisions may be suspended, but appellant has not raised them on appeal and the facts do not support their application here. (See R&TC, § 19316; FTB Technical Advice Memo. 2007-01 (Apr. 23, 2007).)

HOLDING

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

DISPOSITION

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

DocuSigned by:

Eddy Y.H. Lam

Eddy Y.H. Lam

Administrative Law Judge

We concur:

DocuSigned by:

Andrew Wong

Andrew Wong

Administrative Law Judge

DocuSigned by:

John O Johnson

John O. Johnson

Administrative Law Judge

Date Issued: 11/10/2022