

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. HOOD¹

) OTA Case No. 21108799
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OPINION

Representing the Parties:

For Appellant:

M. Hood

For Respondent:

Nancy E. Parker, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Hood (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$542 for the 2009 tax year.

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

ISSUE

Whether the statute of limitations bars appellant’s claim for refund of \$542 for the 2009 tax year.

FACTUAL FINDINGS

1. FTB obtained information that appellant sold California real property but had not filed a 2009 California individual income tax return. FTB issued a Request for Tax Return (Request) on January 13, 2011, to appellant, but the Request was returned by the U.S. Postal Service. On March 1, 2011, FTB issued a second Request to appellant and requested that appellant respond by April 6, 2011.² Appellant did not respond.

¹ M. Hood was formerly named M. Sandee.

² The first Request was sent to appellant’s address in Santee, California. The second Request was sent to appellant’s address in Huntington Park, California.

2. On May 2, 2011, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2009 tax year, proposing tax of \$1,535.00, a late filing penalty of \$383.75, plus interest. Appellant did not protest the NPA, and it went final.
3. FTB issued an Income Tax Due Notice and a Final Notice Before Levy. When appellant did not respond, FTB imposed a \$154 collection fee and a \$20 lien fee and initiated collection action. FTB issued an Order to Withhold Taxes which resulted in a \$50 payment on December 3, 2018.
4. Thereafter, appellant entered into an installment agreement with FTB to pay her balance due. Between February 25, 2019, and March 25, 2020, pursuant to the installment agreement, appellant made payments totaling \$700.
5. Between April 27, 2020, and August 25, 2021, pursuant to the installment agreement, appellant made payments totaling \$850.
6. On March 29, 2021, appellant filed her 2009 California Resident Income Tax Return, reporting no tax due. FTB accepted the return as filed, which it treated as a claim for refund of \$1,399.11 for the 2009 tax year.³
7. By letter dated September 2, 2021, FTB allowed a \$857.11 refund,⁴ but disallowed the remainder of appellant's claim for refund of \$542.00.
8. 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*,

³ Appellant did not include the December 3, 2018 payment, and the payments she made through the provisional payment plan, on her California Resident Income Tax Return. FTB determined that appellant was requesting a refund of all amounts paid, which totaled \$1,600.00 (\$50.00 + \$700.00 + \$850.00). FTB abated the late filing penalty, but offset appellant's requested refund by \$208.00, consisting of the collection fee of \$154.00, the lien fee of \$20.00, and an installment agreement fee of \$34.00. FTB also credited appellant interest of \$7.11. Thus, FTB determined that appellant's overpayment was \$1,399.11 (\$1,600.00 – \$208.00 + \$7.11).

⁴ The \$857.11 refund consisted of \$850.00 in payments made between April 27, 2020, and August 25, 2021, and \$7.11 in interest.

2018-OTA-052P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347.) 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 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 the date her 2009 California tax return was filed (i.e., on March 29, 2021), which FTB treated as appellant's refund claim, appellant's payments and credits totaled \$857.11. FTB refunded appellant \$857.11. 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 the remaining refund of \$542 should be allowed because the COVID-19 pandemic caused delay. However, appellant untimely filed her claim for refund, and thus, the refund is barred. There is no equitable basis under California law for suspending the statute of limitations.⁵ (*Appeal of Estate of Gillespie, supra*; *Appeal of Benemi Partners, L.P., supra.*)


⁵ Statutory exceptions to the statute of limitations exist, such as R&TC section 19316, which tolls the statute of limitations during the period where a taxpayer establishes a financial disability, but appellant has not asserted or shown evidence that any statutory exceptions apply here.

HOLDING


The statute of limitations bars appellant’s claim for refund of \$542 for the 2009 tax year.


DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew Wong
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

Date Issued: 12/13/2022