

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

R. IDE

) OTA Case No. 21119026
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OPINION

Representing the Parties:

For Appellant:

Ralph H. Forrester, Jr.

For Respondent:

Alisa L. Pinarbasi, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Ide (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,453 for the 2015 taxable year.

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

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant filed a timely California tax return for taxable year 2015, on May 21, 2016, reporting total tax of \$1,453. After subtracting withholding of \$3,406, FTB refunded the balance of \$1,953.
2. Appellant filed an amended California tax return for taxable year 2015, on August 13, 2021, reporting total tax of \$0 and an overpayment of \$1,453.
3. On September 7, 2021, FTB denied appellant’s claim for refund based on the expiration of the statute of limitations.

4. Appellant's representative signed an amended federal tax return for taxable year 2015 on July 22, 2021. On October 18, 2021, the IRS denied appellant's claim and, as of September 9, 2022, had made no adjustment to appellant's 2015 federal tax account.¹
5. 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 limitations provides, in pertinent part, that no credit or refund shall 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 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 Benemi Partners, L.P.*, 2020-OTA-144P.) When a change or correction is made or allowed by the IRS, a taxpayer may file a claim for refund within two years of the final federal determination. (R&TC, § 19311(a).)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, *supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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. (*Ibid.*)

Appellant asserts that because the 2015 return was amended to apply the carry back of a net operating loss from taxable year 2017, the statute of limitations does not expire until four years after the due date for the 2017 tax return. Appellant contends that the four-year statute of

¹ Appellant's federal account transcript reports that appellant's federal claim was disallowed and reports a \$0 adjustment. It is likely that the amended federal return, signed July 22, 2021, was treated as a claim for refund that was rejected based on expiration of the statute of limitations. (See Internal Revenue Manual, I.R.M. § 25.6.1.15.2.2.1(2) (October 5, 2016).) OTA requested documentation from appellant with respect to the amended federal return to ascertain what action, if any, the IRS took. Appellant did not respond. A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Bindley*, 2019-OTA-179P.)

limitations does not expire until April 17, 2022,² and the amended return filed August 13, 2021, is therefore a timely claim for refund.

FTB contends that California does not conform to Internal Revenue Code (IRC) section 6511(d)(2)(A). That section provides that if a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, the statute of limitations runs for three years from the date prescribed for filing the return (including extensions thereof) for the taxable year which resulted in the net operating loss carryback. (IRC, § 6511(d)(2)(A).) Therefore, FTB asserts that the applicable statute of limitations for California is set forth in R&TC section 19306. FTB further asserts that R&TC section 19311 is inapplicable to this appeal because the IRS did not make or allow an adjustment to appellant's 2015 federal liability.

With respect to the first four-year limitations period in R&TC section 19306, appellant filed the 2015 California tax return on May 21, 2016, and the limitations period expired on May 21, 2020. The second four-year limitations period expired April 15, 2020, four years after the date prescribed for filing the 2015 tax return. The one-year statute of limitations period expired on April 15, 2017, because appellant's only payment to FTB was tax withholding which is deemed paid on the original due date for filing the return.³ (R&TC, § 19002(d)(2).) Furthermore, the two-year statute of limitations found in R&TC section 19311 does not apply to extend the statute of limitations because the IRS had not made or allowed any adjustment to appellant's federal tax liability.

² Appellant asserts that the statute of limitations period for taxable year 2017 expired on April 17, 2022; however, the limitations period based on the date prescribed for filing is expressly without regard to any extension of time for filing the return, which would have been April 15, 2022. (R&TC, § 19306(a).)


³ FTB alleges that appellant paid the tax on the date the original return was filed on May 21, 2016. OTA's record reflects that appellant's only "payment" was withholding credits. As such, the payment is deemed paid on April 15, 2016.

HOLDING


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


DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Huy "Mike" Le
Administrative Law Judge

Date Issued: 12/30/2022