

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. ROSE

) OTA Case No. 22019567
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OPINION

Representing the Parties:

For Appellant: D. Rose

For Respondent: Camille Dixon, Tax Counsel

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Rose (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,068.34 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.) 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 of \$1,068.34 is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a California tax return for the 2015 tax year.
2. FTB received information indicating that for the 2015 tax year, appellant received California source income and had a California filing requirement.
3. On June 26, 2017, FTB issued appellant a Notice of Proposed Assessment (NPA) dated April 18, 2011, setting forth estimated California taxable income. The NPA proposed additional tax, a late filing penalty of \$728, and applicable interest.
4. Appellant did not protest the NPA, and the proposed assessment became final.

5. When appellant failed to pay the balance due, FTB pursued involuntary collection action. The following payments, totaling \$4,314.89, were applied to appellant's 2015 tax year account: (1) between June 15, 2019, and April 6, 2020, FTB received 21 payments of \$100.00 each, totaling \$2,100.00; (2) between April 15, 2020, and February 8, 2021, FTB received 22 payments of \$100.00 each, totaling \$2,200.00; and (3) on February 15, 2021, FTB received a payment of \$14.89.
6. On April 15, 2021, appellant untimely filed her 2015 tax return, reporting total tax of \$1,143.00, a withholding credit of \$423.00, and tax due of \$720.00. FTB accepted appellant's return as filed, reduced the late filing penalty to \$180.00, and treated the return as a claim for refund of an overpayment of \$3,327.31.¹
7. FTB determined that due to the applicable statute of limitations for a timely claim for refund, FTB could only refund appellant \$2,258.97, which consists of the payments made between April 15, 2020, and February 15, 2020 (\$2,214.89), plus interest (\$44.08).
8. On January 5, 2022, FTB issued appellant a refund of \$2,258.97, resulting in an overpayment of \$1,068.34 (\$3,327.31 - \$2,258.97) remaining on appellant's 2015 tax year account.
9. In a letter dated January 11, 2022, FTB notified appellant it denied her claim for refund in the amount of \$1,068.34 because the statute of limitations expired.
10. 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 that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer 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 of the return (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 to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

¹ This amount consists of the revised liability of \$1,454.66 for the 2015 tax year (i.e., reported tax liability of \$1,143.00 + late filing penalty of \$180.00 + interest of \$131.66) minus \$4,781.97 in account credits (i.e., \$423.00 reported withholding credit + \$4,314.89 in total payments + \$44.08 interest refunded).

Due to the Covid-19 State of Emergency, FTB extended the refund claim statute of limitations in limited cases. For purposes of claiming a refund claim within four years of the original filing due date, if the refund claims expired during the period of March 12, 2020, through July 15, 2020 (postponement period), the claim is considered timely if filed on or before July 15, 2020. (See FTB Notice 2020-02.) For purposes of claiming a refund under the one-year statute of limitations, the claim is considered timely if the date that is one year after the payment date falls within the postponement period and the taxpayer filed the claim on or before July 15, 2020. (*Ibid.*)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) The law does not provide for the waiver of the statutory period based on reasonable cause. (*Appeal of Khan*, 2020-OTA-126P.) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund.² (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Exceptions are not granted on equitable bases or for reasonable cause. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant's 2015 tax return, which was untimely filed on April 15, 2021, is treated as appellant's claim for refund. The four-year statute of limitations for appellant's 2015 refund claim expired on July 15, 2020 (see FTB Notice 2020-02), and appellant filed her claim for refund on April 15, 2021. Therefore, appellant filed her claim for refund past the four-year statute of limitations period.

The one-year statute of limitations for the 21 payments totaling \$2,100.00 made between June 15, 2019, and April 6, 2020, expired between July 15, 2020 (see FTB Notice 2020-02), and April 6, 2021. Because appellant filed her claim for refund on April 15, 2021, her claim for

² Though not applicable here, financial disability due to medically determined physical or mental impairment is an example of an exception. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

refund is untimely under the one-year statute of limitations period for these 21 payments. The one-year statute of limitations for the 22 payments totaling \$2,200.00 made between April 15, 2020, and February 8, 2021, expired between April 15, 2021, and February 8, 2022. In addition, the one-year statute of limitations for the February 15, 2021 payment of \$14.89 expired on February 15, 2022. Because appellant filed her claim for refund on April 15, 2021, her claim for refund is timely under the one-year statute of limitations period for these 23 payments totaling \$2,214.89 (\$2,200.00 + \$14.89).

There is no merit to appellant’s argument that her claim for refund should be granted because she “paid off [her] entire obligation on time after working” with an FTB representative. FTB properly issued appellant a refund of \$2,258.97 (overpayments of \$2,214.89 + interest of \$44.08). FTB also properly denied appellant’s claim for refund, as it pertains to the remaining overpayment amount of \$1,068.34 (total overpayments of \$3,327.31 – refunded payments of \$2,258.97).

HOLDING

Appellant’s claim for refund of \$1,068.34 is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained.

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 12/27/2022