

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 22029790
UNOVO, LLC)
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OPINION

Representing the Parties:

For Appellant: John Melot, Chief Financial Officer

For Respondent: Justin Sung, Graduate Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Unovo, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,100 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 is a single member, Nevada Limited Liability Company (LLC). Appellant did not elect to be treated as a corporation and, as a result, it is classified as a disregarded entity for tax purposes. On September 28, 2015, appellant registered in California as a foreign LLC.
2. On February 16, 2019, appellant filed a California LLC Return of Income reporting an LLC fee of \$6,000 and an annual LLC tax of \$800.
3. FTB assessed interest and penalties such that appellant’s liability totaled \$9,648.
4. Appellant made payments to FTB on May 31, 2019, July 5, 2019, July 28, 2019, and September 3, 2019.

5. On June 14, 2022, appellant filed an amended tax return reporting an LLC fee of \$900 and an annual LLC tax of \$800 and requested a refund of \$5,100.
6. FTB denied appellant's claim for refund because the statute of limitations had expired.
7. This timely appeal followed.

DISCUSSION

For the taxable year at issue, LLCs doing business in California were required to file a return on or before the fifteenth day of the fourth month following the close of its taxable year. (R&TC, § 19633.5(i)(1) & (3).) 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 may 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.)

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 acknowledges that the statute of limitations to claim a refund for taxable year 2015 expired. The return was filed late, and as such, the due date to file a claim for refund was either July 15, 2020,¹ four years from the due date of the return, or September 3, 2020, one year from the date of the final payment for 2015. To the extent appellant is arguing that FTB's form instructions or employee incorrectly advised it, OTA notes that the doctrine of equitable tolling does not apply to the statute of limitations provisions of R&TC section 19306. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) California follows the reasoning in *U.S. v. Brockamp* (1997) 519 U.S. 347, 352, which analyzed Internal

¹ FTB postponed the deadline to request a refund due to the COVID-19 State of Emergency. (See FTB Notice 2020-02.)


Revenue Code section 6511, the federal statute of limitations, reasoning that “Section 6511’s detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate...that Congress did not intend courts to read other unmentioned, open-ended, ‘equitable’ exceptions into the statute that it wrote.” (See also *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P; *Appeal of Benemi Partners, L.P., supra.*) OTA, therefore, has no basis to grant appellant’s request.

HOLDING


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

DISPOSITION

FTB’s action denying appellant’s claim for refund for taxable year 2015 is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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Daniel K. Cho
Administrative Law Judge

Date Issued: 12/28/2022