

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
R. PARDO) OTA Case No. 22039856
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OPINION

Representing the Parties:

For Appellant: R. Pardo

For Respondent: Josh Ricafort, Tax Counsel

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Pardo (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,317.12 for the 2015 taxable 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 for the 2015 taxable year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a 2015 California income tax return.
2. FTB obtained information that appellant received income sufficient to prompt a filing requirement for the 2015 taxable year.¹
3. On May 2, 2017, FTB issued a Demand for Tax Return to appellant for the 2015 taxable year. Appellant did not respond or file a California income tax return. On July 3, 2017,

¹ For the 2015 taxable year, the minimum California adjusted gross income filing threshold for a single filer under 65 years of age with no dependents was \$13,005.

- FTB issued a Notice of Proposed Assessment (NPA) for the 2015 taxable year which requested a response by June 7, 2017. On September 1, 2017, appellant protested the NPA and requested additional time to file his return.
4. The NPA became due and payable. On February 6, 2018, FTB issued an order directing appellant's bank to withhold funds from appellant's bank account in the amount of \$8,301.08.
 5. On November 4, 2021, appellant filed a 2015 California personal income tax return.² FTB processed the return and treated it as a claim for refund for the 2015 taxable year.
 6. FTB denied the claim for refund on the basis that appellant did not file it within the applicable statute of limitations period.
 7. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a), (b); *Appeal of Cornbleth*, 2019-OTA-408P.) 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.)

R&TC section 19306(a) provides 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 prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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.*) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional

² Although the parties disagree on appellant's filing date, the four-day discrepancy does not materially alter the outcome of this case and therefore OTA will assume that the return was filed on the earlier date of November 4, 2021, based on the date stamp on the top of appellant's return.

harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Cornbleth, supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

The first four-year statute of limitations period does not apply in this case because appellant did not timely file his 2015 tax return. For the second four-year statute of limitations period, appellant's 2015 taxable year return was due on April 18, 2016, and the period to timely file a claim for refund would have expired on April 18, 2020. However, 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 period to claim a refund expired during the period of March 12, 2020, through July 15, 2020, the claim is considered timely if filed on or before July 15, 2020.³ Appellant filed his claim for refund on November 4, 2021, over 15 months after July 15, 2020. Accordingly, appellant's claim for refund is untimely under the second four-year statute of limitations period.⁴

With respect to the final statute of limitations period, appellant's claim for refund would be timely with regard to any payments made during the period running from November 4, 2020, through November 4, 2021. However, no payments were made within this one-year period. The payment received pursuant to collection action on March 1, 2018, occurred more than two years prior. Thus, appellant's claim for refund of \$5,317.12 is barred by the statute of limitations.

³ See FTB Notice 2020-02 (March 30, 2020), available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.

HOLDING

Appellant’s claim for refund for the 2015 taxable year is barred by the statute of limitations.

DISPOSITION

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

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:
DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 1/6/2023