

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. DAMICO

) OTA Case No. 220410166
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OPINION

Representing the Parties:

For Appellant: R. Damico

For Respondent: Phillip C. Kleam, Tax Counsel III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Damico (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,171.66 for the 2015 tax year.

Appellant waived the right to an oral hearing, so the 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 for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return (return) for the 2015 tax year by either the due date of April 18, 2016, or the six-month extension deadline of October 17, 2016.¹
2. On April 4, 2017, FTB requested that appellant file a 2015 return or explain why he did not have a filing requirement. Appellant did not respond.
3. On June 5, 2017, FTB issued to appellant a Notice of Proposed Assessment (NPA) for the 2015 tax year, which estimated appellant’s taxable income at \$84,320 and calculated

¹ The original due date was extended from April 15, 2016, to April 18, 2016, because of Emancipation Day, and the six-month extension deadline was extended to October 17, 2016, because October 15, 2016, was a Saturday.

- tax of \$5,207. After applying withholding credits of \$3,024, FTB proposed a tax liability of \$2,183.
4. On July 11, 2017, appellant filed his 2015 return, reporting taxable income of \$73,178 and tax of \$4,284. Appellant also reported exemption credits of \$1,457, other taxes and credits totaling \$264, and withholding payments totaling \$3,024, resulting in tax due of \$67.
 5. On September 19, 2017, FTB informed appellant that it had accepted the return values, but had revised his balance due from \$67.00 to \$140.87 because it imposed a late-filing penalty of \$67.00 and interest of \$6.87.
 6. On March 6, 2018, appellant paid \$143.07 to the state.
 7. On November 12, 2021, appellant filed an amended 2015 return, reporting taxable income of \$40,880 and tax of \$734. Appellant also reported exemption credits of \$783 and withholding payments totaling \$3,024.
 8. FTB treated appellant's amended 2015 return as a claim for refund of \$3,024.
 9. On January 24, 2022, FTB informed appellant that it had processed his amended return/claim for refund and determined that he had total overpayments of \$3,171.66 with respect to the 2015 tax year. However, FTB denied appellant's claim for refund because appellant did not file it before the applicable statute of limitations expired.
 10. 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*, 2018-OTA-052P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's

failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*)

On appeal, appellant argues that he divorced in 2015 and his ex-wife then deliberately and spitefully failed to file their 2015 return without his knowledge. Appellant also asserts that prior to the 2015 tax year he had always timely filed his returns.

Here, appellant filed his claim for refund on November 12, 2021. Because appellant did not timely file his claim for refund by either its April 18, 2016 due date or within the extension ending on October 17, 2016, the first four-year statute of limitations described in R&TC section 19306(a) is inapplicable. The second four-year statute of limitations described therein ended on April 15, 2020 (i.e., four years from the 2015 return's due date regardless of any extension), so appellant's November 12, 2021 claim for refund was not timely filed within the second four-year statute of limitations.

Regarding the one-year statute of limitations described in R&TC section 19306(a), the overpayments at issue are withholding payments totaling \$3,024 for the 2015 tax year as well as a payment made on March 6, 2018. "For purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return." (Cal. Code Regs., tit. 18, § 19002(d)(1).) Here, the original due date is April 18, 2016, and one year from that date is April 18, 2017. Additionally, for the payment made on March 6, 2018, the one-year statute of limitations expired one year later, on March 6, 2019. However, appellant filed his claim for refund on November 12, 2021, so his claim is untimely as to all payments at issue under their respective one-year statutes of limitations. For these reasons, appellant's claim for refund is not allowed under any of the statutes of limitations described in R&TC section 19306(a).

Regarding appellant's arguments that he relied upon a third-party to file his 2015 return and that he has a history of filing timely, these are reasonable cause and equity arguments, but there is no reasonable cause or equitable basis for suspending the statute of limitations under California law (*Appeal of Benemi Partners, L.P., supra.*)²


² Statutory exceptions to the statute of limitations exist, such as R&TC section 19316, which tolls the statute of limitations during a period when a taxpayer establishes a financial disability, but appellant has not asserted, and the records contain no evidence, that any statutory exceptions apply here.

HOLDING

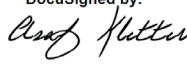
The statute of limitations bars appellant’s claim for refund for the 2015 tax year.

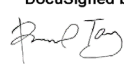
DISPOSITION

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

DocuSigned by:

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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 1/9/2023