

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
V. NICKERL

) OTA Case No. 21098562
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OPINION

Representing the Parties:

For Appellant: V. Nickerl

For Respondent: Topher Tuttle, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Nickerl (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$33,333 for the 2004 tax year.

Office of Tax Appeals Administrative Law Judges Andrea L.H. Long, Sheriene Anne Ridenour, and Amanda Vassigh held an electronic hearing for this matter on August 30, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

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

FACTUAL FINDINGS

1. FTB sent appellant a Demand for Tax Return (Demand), dated January 30, 2006, informing him that based on its records, it appeared that he may have received sufficient income to have a filing requirement for the 2004 taxable year. The Demand provided a deadline to respond by March 1, 2006.

2. When appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) on May 1, 2006, assessing tax based on an estimate of appellant's income, a late filing penalty, a demand penalty, a filing enforcement cost recovery fee, and interest. Appellant did not contest the NPA, and it became final.
3. FTB subsequently engaged in collection activities, including issuing levies and recording a state tax lien against appellant's real property.
4. Appellant and his wife (the couple) had moved out of California in 2004.
5. Appellant called FTB on August 29, 2019, requesting release of an Order to Withhold (levy). Appellant was then informed that his 2003 and 2004 tax returns still needed to be filed.
6. The couple filed a joint 2004 California tax return on November 26, 2019, reporting total tax of \$0 and an overpayment of \$33,333.
7. FTB initially issued a Notice of Tax Return Change – Revised Balance Due, revising appellant's total liability due to \$12. After appellant called FTB to dispute this amount, FTB verified appellant's withholding credits and determined that there was an overpayment of \$33,333 in appellant's 2004 account.¹
8. FTB then accepted appellant's return and treated it as a claim for refund. FTB denied appellant's claim for refund, stating that a refund of the overpayment was barred by the statute of limitations.
9. This timely appeal followed.

DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in 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 within the extended filing period pursuant to R&TC section 18567 or 18604 (whichever is applicable); (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 taxpayer has the burden of proving entitlement to a refund and

¹ This amount was withheld from appellant's sale of real estate located in California.

showing that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2020-OTA-187P.)

Appellant does not argue that the couple filed the 2004 California tax return (treated as appellant's claim for refund) within the prescribed time periods set forth in R&TC section 19306. Rather, it appears that appellant's arguments are equitable in nature.² In the briefs appellant submitted in support of his appeal, he provides as background information some of the upheavals he experienced in life, throughout which he demonstrated remarkable resilience. However, the statute of limitations is mandatory and there is no equitable basis under California law for suspending the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars the taxpayer from later claiming a refund. (*Appeal of Estate of Gillespie, supra.*) Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Ibid.*) Although there are some statutory exceptions, appellant has not asserted or shown evidence that they apply in this appeal.³ (See R&TC, § 19316.) The Office of Tax Appeals (OTA) therefore must examine whether the couple's 2004 California tax return can be treated as a timely claim for refund under the four-year and one-year statute of limitations.

² The couple also seem to contend that they did not receive all of FTB's notices, though they admit to having received some of the notices. At the hearing, appellant's wife testified that the couple did not receive statements from FTB while living in Maui, but "repeatedly" received FTB bills later while living in Oregon. Appellant testified both to having received bills from FTB "for years" as well as FTB correspondence being sent to an old address. FTB sent a notice dated January 13, 2015, notifying appellant of its intent to record a state tax lien, to the same address used in a notice sent to appellant by his bank on August 29, 2019, so it appears that at least as of 2015, the notices were being sent to appellant's correct address. Regardless, nonreceipt of FTB's notices does not fall under any exception to the statute of limitations.

³ As one example, for purposes of the Personal Income Tax Law, the statute of limitations may be tolled under certain circumstances during any period for which an individual taxpayer establishes a financial disability, which means that the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316.) Appellant has not alleged or offered any evidence of a financial disability as a basis for tolling the statute of limitations.

Four-Year Statute of Limitations

For purposes of R&TC section 19306, a return filed within four years from the last day prescribed for filing the return that shows a credit for tax withholdings or estimated tax payments in excess of one dollar shall be treated as a timely refund claim for the excess amount. (R&TC, § 19307.)

The couple failed to file their 2004 return by the extended due date pursuant to R&TC section 18567. The four-year statute of limitations therefore runs from the original due date, April 15, 2005. (R&TC, § 19306(a).) For the 2004 tax year, the four-year statute of limitations expired on April 15, 2009, which is four years from the April 15, 2005 due date of the return. The couple filed their 2004 return on November 26, 2019, and their refund claim is thus barred by the four-year statute of limitations.

One-Year Statute of Limitations

For purposes of claiming a refund within one year of an overpayment, the withholding credits at issue in this appeal are deemed paid on the return filing due date, which was April 15, 2005. (R&TC, § 19002(c)(1); *Appeal of Jacqueline Mairghread Patterson Trust, supra.*) A claim for refund of the withholding credits would only be timely if filed within one year from the date the withholding credits are deemed paid (i.e., filed on or before April 15, 2006). The couple's tax return was filed on November 26, 2019, more than one year after the withholding credits were deemed paid. As such, appellant's refund claim is barred by the one-year statute of limitations.

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth, 2019-OTA-408P.*) 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, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Jacqueline Mairghread Patterson Trust, supra; Appeal of Benemi Partners, L.P., 2020-OTA-144P; Appeal of Estate of Gillespie, supra.*) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm (1990) 494 U.S. 596, 602; Appeal of Benemi Partners, L.P., supra.*) Thus, even when there was an overpayment, as in appellant's case, there is no recourse to refund taxes paid when the claim for refund is untimely. This is because, without a timely refund claim, FTB does not have the statutory authorization to refund

amounts paid and OTA does not have statutory authorization to require FTB to do so. (*Appeal of Estate of Gillespie, supra.*)

The courts have held that while fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84; *U.S. v. Boyle* (1985) 469 U.S. 241, 249.) In this case, without a timely refund claim, appellant's claim for refund is barred by the statute of limitations.

HOLDING

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

DISPOSITION

FTB's action denying appellant's claim for refund for the 2004 tax year is sustained.

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Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

We concur:

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour

Administrative Law Judge

Date Issued: 12/6/2022