

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. KELLEY

) OTA Case No. 220410191
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: C. Kelley

For Respondent: Carolyn Kuduk, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Kelley (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$944.01 for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant untimely filed a 2016 California amended tax return (Form 540X) on October 21, 2019. Appellant filed an amended return erroneously believing his bookkeeper filed an original return for the 2016 tax year.
2. FTB issued a notice on December 16, 2019, indicating appellant had an outstanding balance due of \$6,954.76 for the 2016 tax year.
3. Appellant began making monthly installment payments of \$150 toward the 2016 liability on February 18, 2020.

4. Appellant filed a 2016 California nonresident tax return (Form 540NR) on September 15, 2021, stating he had no California source income and owed no taxes for 2016 because he was a nonresident of California.
5. FTB accepted the amended return as filed, treated it as a refund claim, and refunded all payments not barred by the statute of limitations. FTB determined a total of \$944.01 was barred by the statute of limitations, based on all payments made before the one-year statute of limitations period.
6. Appellant timely filed this appeal seeking a refund of the \$944.01.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that no credit or refund may be allowed unless a refund claim 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

FTB partially allowed appellant's refund claim by refunding all payments made within one year of filing the refund claim. The issue on appeal is whether appellant is entitled to a refund of payments made prior to September 15, 2020—that is, payments made outside the one-year period. OTA finds that these payments are barred by the statute of limitations.

The first statute of limitations period is not applicable because appellant did not timely file his 2016 California tax return. The second statute of limitations period expired on May 17, 2021, for the 2016 tax year.¹ Appellant filed the refund claim almost four months later on September 15, 2021; therefore, the second statute of limitations period expired. Under the third statute of limitations period, appellant is entitled to a refund of only those payments made

¹ For the 2016 tax year, the statute of limitations expired on April 15, 2021. However, due to the COVID-19 pandemic, FTB treated refund claims filed by May 17, 2021, as timely. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

within one year of filing the refund claim—i.e., payments made on or after September 15, 2020. Thus, FTB properly denied the refund of all payments made prior to that date.

Appellant contends that the statute of limitations should not apply in the first instance because he never owed taxes for the 2016 tax year. However, there is no reasonable cause exception to the statute of limitations. (*Appeal of Gillespie, supra.*) A taxpayer’s untimely filing of a refund claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra.*)

Accordingly, FTB’s action must be upheld.

HOLDING

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

88F35E2A835348D...
Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:

0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:

25F8FE08FF58478...
Natasha Ralston
Administrative Law Judge

Date Issued: 1/27/2023