

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220610669
G. GONZALEZ)
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OPINION

Representing the Parties:

For Appellant: G. Gonzalez

For Respondent: Alisa L. Pinarbasi, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Gonzalez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,460.01 for the 2016 tax 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 in the amount of \$14,460.01 is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California Resident Income Tax Return for the 2016 tax year.
2. FTB obtained information indicating that appellant received sufficient income for the 2016 tax year to prompt a return filing requirement.¹ FTB issued appellant a Request for Tax Return requesting that appellant respond or file a California income tax return. Appellant did not respond or file a tax return.

¹ For the 2016 tax year, the filing threshold for a single filer under 65 years of age with no dependents was California gross income of at least \$16,597 or adjusted gross income of at least \$13,278.

3. FTB issued a Notice of Proposed Assessment (NPA) estimating appellant's income and proposing a tax assessment of \$13,618.00 and a late filing penalty of \$3,404.50, plus interest. Appellant did not respond to the NPA, and it went final. FTB then issued a Notice of State Income Tax Due. Appellant did not respond to the notice, and FTB initiated collection action and imposed a \$317.00 collection cost recovery fee and two \$20.00 lien fees.
4. FTB received payments of \$14,817.01, \$59.37, and \$3,259.83 on April 15, 2019, July 30, 2021, and August 6, 2021, respectively. These payments totaled \$18,136.21.
5. On July 15, 2021, appellant filed his California personal income tax return for the 2016 tax year, reporting zero tax liability.
6. FTB accepted the return as filed and treated the return as a claim for refund of \$17,833.14.² FTB issued a refund to appellant in the amount of \$3,373.13.³ FTB denied appellant's claim for refund for the remaining overpayment of \$14,460.01 on the basis that appellant had not filed a claim for refund within the statute of limitations.
7. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law, 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); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(c).)

² \$18,136.21 of payments, plus \$53.93 of interest allowed and paid by FTB on the payments refunded to appellant, less the \$317.00 collection cost recovery fee and two \$20.00 lien fees, equals \$17,833.14. FTB is required to impose the collection cost recovery fee. (R&TC, § 19254.) FTB has no authority to abate or modify the cost recovery fee and appellant has not asserted that the fee was invalid or improper. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Similarly, FTB is authorized to collect the various fees associated with the recording and releasing of a state tax lien. (Gov. Code, § 7174(d).) Once FTB properly imposes the lien fee, the statute does not permit abatement for any reason.

³ This amount included a refund for payments of \$59.37 and \$3,259.83 on July 30, 2021, and August 6, 2021, and interest of \$53.93 allowed on the payments refunded to appellant.

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 within the extended filing period 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. 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. (*Ibid.*) If a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for 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 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.)

In this appeal, appellant's return was due on April 15, 2017. Appellant's return, which is also his claim for refund, was not filed until July 15, 2021. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file a return within the extended filing period. The second four-year statute of limitations period to file a claim for refund expired on April 15, 2021. However, FTB postponed the date for individual taxpayers to file a claim for refund for tax year 2016 until May 17, 2021, because of COVID-19.⁴ Appellant's claim for refund was not filed until July 15, 2021, and is, therefore, untimely under the second four-year statute of limitations period.

With respect to the final period described in R&TC section 19306(a), FTB has issued a refund of the two payments made during the one-year period from July 15, 2020, through July 15, 2021, plus applicable interest. No other payments were made within the one-year statute of limitations period.⁵ For the remaining payment of \$14,817.01 made outside the one-year

⁴ 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>.

⁵ Appellant's remaining payment for the 2016 tax year was made on April 15, 2019, more than one year prior to when appellant filed his claim for refund on July 15, 2021.

period, appellant's claim for refund is barred by the statute of limitations and no refund may be made.⁶

Appellant does not dispute that his refund claim was filed late. Appellant explains that the delay was due to his return preparer failing to timely file the return. However, California law does not permit for the waiver of the statutory period based on reasonable cause. A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Benemi Partners, L.P., supra; Appeal of Khan, 2020-OTA-126P.*) Thus, even when, as here, FTB based its tax assessment on an estimated amount of income that was later proved to be inaccurate, 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 authority to refund amounts paid and Office of Tax Appeals does not have statutory authority to require FTB to do so. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*)

⁶ The \$14,817.01 payment made on April 15, 2019, less the \$317.00 collection cost recovery fee and the two \$20.00 lien fees, results in the claim denial amount of \$14,460.01.

HOLDING

Appellant’s claim for refund in the amount of \$14,460.01 is barred by the statute of limitations.

DISPOSITION

FTB’s action 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:
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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

Date Issued: 2/15/2023