

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21098546
C. GOLDFARB)
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OPINION

Representing the Parties:

For Appellant: C. Goldfarb
For Respondent: Camille Dixon, Tax Counsel
Topher Tuttle, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Goldfarb (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$19,263.09 for the 2016 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Sara A. Hosey, Suzanne B. Brown, and Ovsep Akopchikyan held a virtual hearing for this matter on January 27, 2023. 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 for the 2016 tax year 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 from the Board of Equalization indicating that appellant held a professional/business license and that the average income for this occupation indicated that appellant received sufficient income for the 2016 tax year to prompt a return filing

- requirement. On April 12, 2018, FTB issued appellant a Request for Tax Return requesting that appellant respond or file a California income tax return no later than May 16, 2018. Appellant did not respond or file a tax return by that due date.
3. On June 11, 2018, FTB issued a Notice of Proposed Assessment (NPA) estimating appellant's income¹ and proposing a tax assessment of \$11,963, a demand penalty of \$2,963, a delinquent filing penalty of \$2,963, and a filing enforcement fee of \$84, 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 collection cost recovery fee.
 4. FTB levied \$19,525 from appellant's bank account on April 19, 2019, pursuant to a wage and withholding order, that satisfied appellant's 2016 tax year balance due.
 5. On August 4, 2021, appellant untimely filed her California personal income tax return for the 2016 taxable year, reporting zero tax liability.
 6. FTB accepted the return as filed and treated the return as a claim for refund of \$19,263.09.² FTB denied appellant's claim for refund for the overpayment 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. (Cal. Code Regs., tit. 18, § 30219(c).)

¹ FTB used the gross sales from appellant's sales tax return and multiplied it by the average gross profit percentage from appellant's type of business.

² The actual overpayment on appellant's account is in the amount of \$19,208 (the levied payment of \$19,525 less the \$317 collection cost recovery fee). However, the claim denial issued by FTB credited appellant with a \$55.09 write off pursuant to Government Code section 12437.

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.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

Appellant's 2016 return was due on April 18, 2017. Appellant's return, which is also her claim for refund, was not filed until August 4, 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 18, 2021. However, FTB postponed the date for individual taxpayers to file a claim for refund for taxable year 2016 until May 17, 2021, because of COVID-19.³ Appellant's claim for refund was not filed until August 4, 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), only payments made after August 4, 2020 (i.e., within one year prior to the refund claim), are eligible for refund or credit. However, the last payment received on appellant's 2016 tax year account was on April 19, 2019. Therefore, appellant's claim for refund is barred by the statute of limitations and no refund may be made.

Appellant does not dispute that her refund claim was filed late. Appellant explains that the delay was in part due to her tax 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

³ 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>.

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 shown 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 OTA does not have statutory authority to require FTB to do so. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*)

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 3/21/2023