

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
B. BOTELHO (DEC'D)

) OTA Case No. 22039980
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OPINION

Representing the Parties:

For Appellant: Joe Botelho, Trustee

For Respondent: Josh Ricafort, Tax Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Botelho (dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$517.26 for the 2013 tax year and \$443.94 for the 2014 tax year.

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

ISSUE

Whether appellant's claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant failed to timely file her 2013 and 2014 California income tax returns.
2. FTB received information that appellant earned sufficient income to prompt a filing requirement for the 2013 and 2014 tax years. Therefore, FTB issued appellant a Demand for Tax Return (Demand) for the 2013 and 2014 tax years.
3. When appellant did not respond to the Demands, FTB issued Notices of Proposed Assessment (NPAs) for the 2013 and 2014 tax years.

4. The 2013 and 2014 NPAs estimated appellant's income and determined that appellant owed tax, penalties, fees, and interest.
5. FTB initiated collection action and received payments from October 10, 2015, to January 3, 2017, for the 2013 tax year, and received payments from January 3, 2017, to October 2, 2017, for the 2014 tax year.
6. Appellant passed away on September 6, 2020.
7. On November 29, 2021, appellant's representative untimely filed her 2013 and 2014 tax returns. FTB accepted the returns as filed, resulting in an overpayment of \$517.26 and \$443.94 for the 2013 and 2014 tax years, respectively.
8. FTB treated the returns as claims for refund for those amounts but denied the claims because appellant failed to file her returns claiming the refunds before the statute of limitations expired.
9. This timely appeal followed.

DISCUSSION

The taxpayer has the burden of proof to show that a claim for refund is timely, and the taxpayer is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Since no returns were timely filed for the 2013 and 2014 tax years, the applicable claim for refund statute of limitations here is the later of four years from the last day to file the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) Otherwise, the claim for refund is untimely, and no credit or refund is allowed. (*Appeal of Estate of Gillespie*, *supra*.)

For the 2013 tax year, the four-year statute of limitations period expired on April 15, 2018, four years from the April 15, 2014 original due date of the 2013 tax return. (R&TC, §§ 18566, 19306(a).) Appellant's claim for refund for the 2013 tax year was filed on November 29, 2021. Therefore, appellant filed her claim for refund beyond the four-year statute of limitations period.

As for the one-year statute of limitations period, FTB initiated collection action and received payments, with the last payment made on January 3, 2017. Therefore, the one-year statute of limitations period expired on January 3, 2018, before appellant filed her claim for refund on November 29, 2021. Thus, appellant's 2013 claim for refund is not timely.

Similarly, for the 2014 tax year, the four-year statute of limitations period expired on April 15, 2019, four years from the April 15, 2015 original due date of the 2014 tax return. (R&TC, §§ 18566, 19306(a).) Appellant’s claim for refund for the 2014 tax year was filed on November 29, 2021. Therefore, appellant filed her claim for refund beyond the four-year statute of limitations period.

As for the one-year statute of limitations period, FTB initiated collection action and received payments, with the last payment made on October 2, 2017. Therefore, the one-year statute of limitations period expired on October 2, 2018, before appellant filed her claim for refund on November 29, 2021. Thus, appellant’s 2014 claim for refund is not timely.

Appellant’s representative argues he was unaware that appellant had not filed her tax returns. However, the language of the statute of limitations must be strictly construed, and there is generally no reasonable cause or equitable basis for suspending the statute of limitations.¹ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Such 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. (*Ibid.*)

Therefore, appellant has not shown her claims for refund were timely filed.

¹ There are circumstances where the statute of limitations provisions may be suspended, but appellant has not raised them on appeal and the evidence do not support their application here. (See R&TC, § 19316.)

HOLDING

Appellant’s claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

DISPOSITION

OTA sustains FTB’s actions.

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Huy “Mike” Le
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Huy “Mike” Le
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

Date Issued: 3/13/2023