

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

I. OCHOA

) OTA Case No. 220410248
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OPINION

Representing the Parties:

For Appellant:

I. Ochoa

For Respondent:

Paige Chang, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Ochoa (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,288.67 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 is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant untimely filed his 2016 California Resident Income Tax Return.
2. FTB received information that appellant earned sufficient income to prompt a filing requirement. Therefore, on April 3, 2018, FTB issued appellant a Request for Tax Return (Request) for the 2016 tax year, requesting that appellant file his tax return, provide evidence that he already filed his tax return, or explain why he had no filing requirement. The Request was sent to appellant’s Maywood, California address.
3. According to FTB’s activity detail log, on May 31, 2018, appellant confirmed with FTB that his proper address for mailing is the Maywood, California address where the Request was sent.

4. When appellant did not respond to the Request, FTB issued a Notice of Proposed Assessment (NPA) for the 2016 tax year. The NPA estimated appellant's income and determined that appellant owed additional tax of \$3,806.00, late filing penalty of \$951.50, and applicable interest, for the 2016 tax year. Appellant did not timely protest the NPA and the NPA became final.
5. FTB received total bill payments in the amount of \$5,678.27, with appellant's last payment received on July 29, 2019. Appellant also had tax withholding in the amount of \$2,049.00. FTB used these amounts to satisfy liabilities that appellant owed for the 2016 tax year.
6. On June 8, 2021, appellant ultimately filed his 2016 tax return. FTB accepted the tax return as filed, resulting in an overpayment of \$4,288.67. FTB treated the 2021 return as a claim for refund for that amount, but denied it because appellant failed to file his return claiming the refund before the statute of limitations expired.
7. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant's refund claim is barred by the statute of limitations because he did not file his refund claim within the statute of limitations as set forth in R&TC section 19306(a). The first statute of limitations period is inapplicable because the 2016 tax return was untimely filed and therefore not filed pursuant to a valid extension of time to file. The deadline for the second statute of limitations period, which FTB postponed to May 17, 2021, because of the COVID-19 pandemic, was not met since appellant's 2016 refund claim was not filed until June 8, 2021.¹

¹ FTB postponed the deadline for claiming 2016 refunds from, as relevant here, April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; FTB, *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021), available at

Lastly, there is no dispute that the third statute of limitations period expired because there were no overpayments made within one year prior to the claim for refund filed on June 8, 2021.²

In appellant's appeal letter, he contends that he suffers from financial hardship due to COVID-19 and that he was a victim of theft and fraud by his ex-spouse. Appellant also expresses that he was diligent in filing his missing 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.³ (*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.*)

Appellant further contends that he was unaware of the overpayments until February 2022, because the Request and NPA notices were sent to an old address. However, the Request and NPA notices sent by FTB to a taxpayer's last known address are presumed to have been received by the taxpayer. (R&TC, § 18416; *Appeal of Floria* (83-SBE-003) 1983 WL 15390.) As relevant to this appeal, R&TC section 18416(c) provides that the last known address shall be the address that appears on the taxpayer's last return filed with FTB, unless FTB has an address it has reason to believe is the most current address for the taxpayer. Here, appellant confirmed on May 31, 2018, that the Maywood, California address is the proper address for him to receive mail. FTB mailed the 2016 Request and NPA to the Maywood, California address. Therefore, the Request and NPA notices were properly mailed to his last known address.

Therefore, appellant has not shown his claim for refund was timely filed.

<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>.)

² The last payment FTB collected from appellant was on July 29, 2019, and appellant's tax withholding payment in the amount of \$2,049 is deemed to be paid on the original due date of the tax return, or April 15, 2017, pursuant to R&TC section 19002(c)(1).

³ There is one circumstance where the statute of limitations provisions may be suspended, but appellant has not raised it on appeal and the facts do not support its application here. (See R&TC, § 19316.)

HOLDING

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

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
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Huy “Mike” Le
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 2/27/2023