

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
P. MARTINEZ

) OTA Case No. 220510305
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OPINION

Representing the Parties:

For Appellant: P. Martinez

For Respondent: Christopher M. Cook, Tax Counsel

For Office of Tax Appeals: Andrew Delvasto, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Martinez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,226.52 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 the statute of limitations bars appellant’s claim for refund for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant did not file a timely 2016 California income tax return.
2. FTB received information from third parties that appellant received sufficient income to trigger the filing requirement for the 2016 tax year. Consequently, on February 22, 2018, FTB issued a demand for tax return to appellant requiring that appellant file a 2016 tax return or explain why no return was required.
3. On April 23, 2018, FTB issued a Notice of Proposed Assessment (NPA). The NPA proposed to assess income tax of \$3,050.00, which after applying withholding of

- \$1,585.00 and exemption credits of \$111.00 resulted in an outstanding liability of \$1,354.00. FTB also imposed a late filing penalty of \$338.50, a demand penalty of \$734.75, a filing enforcement fee of \$84.00, and statutory interest.
4. On October 15, 2018, FTB sent appellant a Final Notice Before Levy and Lien giving notice that collection actions would begin if FTB did not receive full payment within 30 days.
 5. During the period of January 8, 2019, through April 15, 2019, appellant entered into an installment payment agreement and made payments; the payments were applied to appellant's 2016 tax year. In total, appellant paid \$2,959.52.
 6. On January 31, 2022, appellant filed a 2016 tax return reporting zero tax liability, withholdings of \$1,584, and accordingly claiming a refund of \$1,584.
 7. On February 15, 2022, FTB informed appellant that an overpayment balance of \$4,226.52 existed on appellant's 2016 tax year after processing his 2016 tax return. This amount represented the payments totaling \$2,959.52 that appellant made between January 8, 2019, and April 15, 2019, and the \$1,584.00 refund that appellant claimed on his 2016 tax return filed on January 31, 2022, less \$317.00 for collection cost fees. The same notice indicated that appellant's claim for refund would not be allowed because it was made after the expiration of the statute of limitations.
 8. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations to file a claim for refund provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was timely filed; (2) four years from the due date for filing a return for the year at issue (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 the claim for refund is timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly

construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) 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. (*Appeal of Khan*, 2020-OTA-126P.)

Here, appellant filed his claim for refund on January 31, 2022. As such, appellant's claim for refund was not timely because it was made more than four years after the original due date of the return on April 18, 2017, and more than one year from the date of appellant's final claimed overpayment on April 15, 2019.¹ Therefore, appellant's claim for refund is barred by the statute of limitations unless an exception applies.²

Appellant asserts the statute of limitations should be extended in his case because, for all periods before September 2020, his former spouse was responsible for filing his tax return and paying any tax. Based on appellant's contentions, OTA presumes that appellant was under the mistaken belief that his spouse was filing joint income tax returns on his behalf. When a return is filed by a married couple, each spouse has an obligation to ensure the timely filing of their joint return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) As discussed above, there is no reasonable cause or equitable basis for tolling the statute of limitations. (*U.S. v. Brockamp, supra.*) Therefore, appellant's former spouse's failure to file tax returns is not a basis for granting appellant's claim for refund.

¹ Although the statute of limitations for a claim for refund is strictly construed under R&TC section 19306, FTB postponed the deadline for claiming 2016 refunds to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; Franchise Tax Board, *State Postpones Deadlines for Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021) <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>.) Appellant's return was not filed until January 31, 2022. As such, the postponed deadline does not affect our analysis.

² Although appellant does not argue any statutory exception to the statute of limitations, no such exception applies. (See R&TC §§ 18570, 19312, 19316; FTB Technical Advice Memorandum (TAM) 2007-01.)

HOLDING

Appellant’s claim for refund is barred by the statute of limitations provided by R&TC section 19306.

DISPOSITION


FTB’s denial of appellant’s claim for refund is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 3/1/2023