

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. ABRAMS

) OTA Case No. 220510418
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OPINION

Representing the Parties:

For Appellant:

John T. Advani, CPA

For Respondent:

Brian Werking, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Abrams (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$8,452 for the 2016 taxable year.

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

ISSUE

Has appellant established that his claim for refund was timely filed within the statute of limitations date for taxable year 2016?

FACTUAL FINDINGS

1. Appellant filed a timely 2016 California Resident Income Tax Return claiming a refund due of \$9,967, which FTB refunded.
2. FTB received appellant’s Amended Individual Tax Return on March 14, 2022. The purpose of the amendment was to “claim the net operating loss carryback from 2018.” The amended return requested a refund of \$8,452 (in addition to the \$9,967 already refunded to appellant by FTB).

3. FTB accepted the amended return but denied appellant's claim for refund of \$8,452 because the statute of limitations for claiming a refund for the 2016 taxable year had expired.
4. 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 provides, in pertinent 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 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).) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P, citing *United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P., supra.*)

Appellant asserts that the applicable year to apply the statute of limitations is 2018, the year in which the net operating loss carryback was created. Appellant states that because California law allows the net operating loss to be carried back two years, to 2016, that the statute begins to run from taxable year 2018, not 2016. Appellant therefore concludes that his amended return constitutes a timely claim for refund because it was filed within four years from the due date for the 2018 return.

FTB counters that appellant has pointed to no statutory exception to the rule in R&TC section 19306 that provides when the statute of limitations expires for filing a claim for refund. FTB contends that there is no reasonable cause or other basis to toll the statute of limitations and that appellant failed to point to a statute that would alter the statute of limitations for the 2016 taxable year based on a net loss carryback from a future year.

In a review of the record and related law, OTA does not find any provision that would alter the applicable statute of limitation dates based on a net operating loss occurring in a future taxable year. While the R&TC has special statute of limitations periods for certain specified situations such as bad debt losses (see e.g., R&TC, § 19312), the R&TC does not contain a


special statute of limitations period for net operating loss carrybacks.¹ Thus, the net operating loss carryback here is subject to the normal statute of limitations period found in R&TC section 19306, and the applicable taxable year is the one for which the refund is sought; namely, 2016. Based on the foregoing, appellant has not met his burden of proof to show that his claim for refund is timely.

HOLDING

Appellant has not established that his claim for refund was filed within the statute of limitations for taxable year 2016.

DISPOSITION


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

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 2/24/2023

¹ This is unlike the Internal Revenue Code which does provide for a special statute of limitations period for net operating loss carrybacks in section 6511(d)(2).