

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. P. DOBRILOVIC AND
D. S. DOBRILOVIC

) OTA Case No. 221011525
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OPINION

Representing the Parties:

For Appellants: D. P. Dobrilovic

For Respondent: Camille Dixon, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. P. Dobrilovic and D. S. Dobrilovic (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,469 for the 2017 taxable year.

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

ISSUE

Have appellants established they are entitled to a refund for taxable year 2017?

FACTUAL FINDINGS

1. Appellants untimely filed their 2017 California Non-Resident or Part-Year Resident Income Tax Return on July 6, 2022, claiming withholding credits resulting in an overpayment of \$1,785 and requesting that FTB refund that amount.
2. FTB accepted the return as filed and subtracted a \$316 collection cost recovery fee that had been applied to appellants’ 2017 taxable year, resulting in an overpayment by appellants of \$1,469.
3. On August 8, 2022, FTB denied appellants’ claim for refund of the \$1,469 due to the expiration of the statute of limitations.

4. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, 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).) The taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Cornbleth*, 2019-OTA-408P.) 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. The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Khan*, 2020-OTA-126P.) Federal courts have stated that 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.*)

Appellants assert that they requested an extension for additional time to file their 2017 federal return. In addition, appellants contend that a subsequent move to Ohio plus delays due to COVID-19 made it difficult for them to file their California tax return prior to the expiration of the statute of limitations. FTB contends that appellants are making reasonable cause arguments, but the statute of limitations may not be tolled based on reasonable cause.

Appellants did not timely file their 2017 tax return, so the first four-year statute of limitations period in R&TC section 19306(a) is not applicable. Under the second four-year statute of limitations period in R&TC section 19306, to be a timely claim for refund, appellants would have to file their return by April 15, 2022, four years from the original due date of appellants' 2017 return, determined without regard to any extension of time for filing. Appellants did not file until two months later, on July 6, 2022, after the expiration of the four-year statute of limitations.

Appellants' payments for taxable year 2017 were from withholdings totaling \$6,774. "For purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return." (Cal. Code Regs., tit. 18, § 19002(d)(1).) Thus, pursuant to the one-year statute of limitations

period in R&TC section 19306(a), appellants' claim for refund must be filed prior to April 15, 2019, one year from the original due date of appellants' 2017 return. Therefore, appellants' claim for refund filed on July 6, 2022, was also after the expiration of the one-year statute of limitations.


Appellants' reasons for their late claim for refund are essentially reasonable cause arguments. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P, citing *U. S. v. Brockamp* (1997) 519 U.S. 347.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Therefore, the reasons asserted by appellants for filing their claim for refund late do not toll the statute of limitations.

HOLDING


Appellants have not established that they are entitled to a refund for taxable year 2017.

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 3/10/2023