

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**J. CASTRO** ) OTA Case No. 220911467  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: J. Castro  
For Respondent: David Muradyan, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Castro (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$4,864.39 for the 2016 tax year and \$4,721.67 for the 2017 tax year.<sup>1</sup>

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant is entitled to any additional refund for the 2016 and 2017 tax years.

**FACTUAL FINDINGS**

1. Appellant’s employer withheld California income tax from his 2016 and 2017 wage income. Appellant did not timely file his 2016 or 2017 California individual income tax returns (returns).
2. FTB issued appellant Notices of Proposed Assessment (NPAs) for the 2016 and 2017 tax years that went final. FTB initiated collection action and imposed collection cost recovery fees of \$317 and \$316 for the 2016 and 2017 tax years, respectively.

---

<sup>1</sup> As described below, FTB allowed a \$791.25 refund for the 2017 tax year.

3. Appellant made payments to satisfy his tax liabilities. FTB received appellant's last payment for the 2016 tax year on September 15, 2019. For the 2017 tax year, FTB received appellant's last two payments of \$23.82 and \$791.25 on April 5, 2021, and August 13, 2021, respectively.
4. On July 25, 2022, appellant filed his 2016 and 2017 returns claiming overpayments of tax. FTB accepted the returns and treated them as 2016 and 2017 claims for refund.<sup>2</sup>
5. FTB denied in full appellant's 2016 claim for refund of \$4,864.39. FTB refunded \$791.25 of appellant's 2017 claim for refund and denied the remainder of \$4,721.67.
6. 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. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351). The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). 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.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant does not contest – and OTA finds no error in – FTB's determination that appellant's claims for refund were untimely under the four-year statute of limitations. Appellant contends on appeal that a refund should be allowed because he overpaid on liabilities determined by FTB. The overpayments at issue stem from withholding payments and appellant's payments

---

<sup>2</sup> On his return, appellant did not include the payments he made pursuant to FTB's collection efforts. FTB determined that appellant was requesting a refund of all amounts paid exceeding appellant's total tax liability and any penalties, fees, and interest.

on final tax liabilities. Concerning the withholding payments, “[f]or 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).) Here, the original due dates for the 2016 and 2017 returns were April 15, 2017 and April 15, 2018, respectively. On July 25, 2022, appellant filed his 2016 and 2017 returns, well beyond the date on which the respective one-year statute of limitations expired, on April 15, 2018 and April 15, 2019.

In the year prior to filing his 2016 and 2017 claims for refund (i.e., during the period running from July 25, 2021, to July 25, 2022), appellant made no payments on the 2016 liability. In the year prior to filing his 2017 claim, on August 13, 2021, appellant made a \$791.25 payment on the 2017 liability, which FTB refunded. The remainder of appellant’s payments on the 2017 liability were made before July 25, 2021, and thus outside of the one-year statute of limitations period. Therefore, OTA finds no error in FTB’s determinations under the one-year statute of limitations that appellant’s claims for refund were timely only as to the \$791.25 payment for the 2017 tax year and that the remainder of appellant’s claims for refund were untimely.


Appellant implies that he paid tax liabilities which FTB incorrectly determined, however, appellant’s claims were untimely under R&TC section 19306(a). 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. (*Benemi, supra.*)

HOLDING


Appellant is not entitled to any additional refund for the 2016 and 2017 tax years.


DISPOSITION

FTB’s actions in denying appellant’s claims for refund are sustained.

DocuSigned by:  
  
D17AFEDDCAAB045B  
Asaf Kletter  
Administrative Law Judge

We concur:

DocuSigned by:  
  
0CC6C6ACC6A44D  
Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
1A8C8E38740B4D5  
Cheryl L. Akin  
Administrative Law Judge

Date Issued: 4/7/2023