

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
I. PULIDO-KELLY

) OTA Case No. 221011524
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: I. Pulido-Kelly

For Respondent: AnaMarija Antic-Jezildzic, Specialist

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Pulido-Kelly (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$35,978¹ and \$1,321² for the 2016 and 2017 tax years, respectively.

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 claims for refund for the 2016 and 2017 tax years.

¹ FTB’s Notice of Action dated June 30, 2022, disallowed a refund of the overpaid amount of \$37,713.35. The overpaid amount differs from the amount requested on appellant’s 2016 return because she did not include \$2,067.00 in estimated payments, account for the cost collection recovery fee and lien fee totaling \$332.00, and did not account for rounding. On appeal, appellant requests the return or credit of \$37,713.35.

² FTB’s Notice of Action dated June 30, 2022, disallowed a refund of the overpaid amount of \$1,321. The overpaid amount differs from the amount shown on appellant’s 2017 return, which was a balance due of \$678. Appellant did not include a \$2,000 extension payment, and FTB calculated an underpayment of estimated tax penalty of \$1 more. On appeal, appellant requests the return or credit of \$1,321.

FACTUAL FINDINGS

1. Appellant's employer withheld California income tax from her 2016 and 2017 wage income. Appellant did not timely file her 2016 and 2017 California individual income tax returns (returns). On April 15, 2018, appellant made a \$2,000 extension payment for the 2017 tax year.
2. FTB issued appellant a Notice of Proposed Assessment (NPA) for the 2016 tax year that went final. FTB issued appellant Payment Received – No Return on File notices for the \$2,000 extension payment for the 2017 tax year.
3. On March 29, 2019, appellant made a \$32,752.35 payment for the 2016 tax year.
4. On May 26, 2022, appellant filed her 2016 tax return claiming a refund of \$35,978 and her 2017 tax return reporting a balance due. FTB determined that appellant was claiming 2016 and 2017 refunds of all amounts paid exceeding her total tax liability.³ FTB denied the claims for refund because appellant filed them after the statute of limitations expired.
5. This timely appeal followed. On appeal, appellant requests a refund or credit of all overpaid amounts for the 2016 and 2017 tax years.

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 credit or 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 (*Brockamp*)). 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.*)

³ As noted above, on her 2016 return, appellant did not: (1) include \$2,067 in estimated payments, (2) account for the cost collection recovery fee and lien fees, and (3) account for rounding. On her 2017 return, appellant did not include a \$2,000 extension payment and calculated a lower underpayment of estimated tax penalty.

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 determinations that: (1) appellant’s claims for refund were untimely under the four-year statute of limitations; and (2) appellant’s claims for refund were untimely under the one-year statute of limitations.

Appellant primarily contends that she was not aware of the statute of limitations to be refunded her overpayments. This is a reasonable cause argument, and there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Brockamp, supra.*)⁴ 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.⁵ (*Benemi, supra.*)

In the alternative, appellant requests that the overpaid taxes be credited to future tax years. However, R&TC section 19306(a) explicitly provides that no credit shall be allowed unless a claim is timely filed within the statute of limitations.

⁴ OTA notes that the Payment Received – No Return on File notices informed appellant about the statute of limitations for filing a refund claim.

⁵ R&TC section 19316 provides that the period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is “financially disabled,” as defined in R&TC section 19316(b). Appellant does not contend, and the evidence does not show, that R&TC section 19316 is applicable.

HOLDING

The statute of limitations bars appellant’s claims for refund for the 2016 and 2017 tax years.

DISPOSITION

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

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B
Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
25E8FE08FE56478
Natasha Ralston
Administrative Law Judge

DocuSigned by:
Josh Lambert
CB1F7DA37831416
Josh Lambert
Administrative Law Judge

Date Issued: 4/21/2023