

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. RUIZ

) OTA Case No. 221011722
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OPINION

Representing the Parties:

For Appellant: Richard Mathurin, Representative

For Respondent: AnaMarija Antic-Jezildzic, Specialist

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Ruiz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$790.04 for the 2012 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) 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 2012 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2012 tax year.
2. FTB received information from third party sources indicating that appellant received sufficient income in 2012 to trigger a filing requirement. Consequently, FTB issued to appellant a Demand for Tax Return (Demand) for the 2012 tax year, but appellant did not file her tax return or respond to the Demand.
3. Following appellant’s nonresponse to the Demand, FTB estimated appellant’s income using the information available to it and issued a Notice of Proposed Assessment (NPA)

- for the 2012 tax year. Appellant did not respond to the NPA, and the proposed liability became final.
4. Thereafter, FTB commenced collection actions, through which it collected \$1,227.90 on March 9, 2015.
 5. On September 26, 2022, appellant ultimately filed her 2012 California income tax return, reporting a tax liability of \$165.00. Appellant's tax return, however, did not account for the \$1,227.90 payment FTB collected through its collection action.
 6. FTB treated appellant's tax return as a claim for refund for \$790.04 (\$1,227.90 minus the \$165.00 reported tax liability, a \$135.00 late filing penalty, a \$41.25 demand penalty, a \$78.00 filing enforcement fee, and \$18.61 in interest), which FTB denied.
 7. 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 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Ibid.*)

Here, because appellant did not file her 2012 tax return pursuant to a valid extension of time, appellant cannot avail herself of the first four-year statute of limitations under R&TC section 19306(a).

For the claim for refund to be timely under the second four-year statute of limitations, appellant was required to file the claim by April 15, 2017 (i.e., within four years of

April 15, 2013, when her 2012 tax return was due). Appellant, however, filed her 2012 tax return, which FTB treated as a claim for refund, on September 25, 2022 – more than five years after the expiration of the deadline. Therefore, appellant’s claim for refund is time-barred under the second four-year statute of limitations.

With respect to the one-year statute of limitations, FTB collected \$1,227.90 on March 9, 2015. As such, appellant had until March 9, 2016, to file a claim for refund for any portion of that payment. Because appellant filed her 2012 tax return, which FTB treated as a claim for refund, on September 25, 2022 (more than six years late), appellant’s claim for refund was also untimely under the one-year statute of limitations.

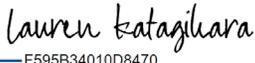
The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (See *Appeal of Estate of Gillespie, supra.*) However, on appeal, appellant has not provided any contentions addressing the timeliness of her claim for refund. Consequently, the strict construction of the statute of limitations applies, and appellant’s claim for refund is time-barred.

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2012 tax year.

DISPOSITION

FTB’s action is sustained in full.

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Lauren Katagihara
Administrative Law Judge

Date Issued: 3/23/2023