

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. VARGAS AND
H. VARGAS) OTA Case No. 22039906
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)
)
)**OPINION**

Representing the Parties:

For Appellants:

D. Vargas
H. Vargas

For Respondent:

Josh Ricafort, Tax Counsel

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Vargas and H. Vargas (collectively, appellants) appeal actions by respondent Franchise Tax Board (FTB) partially denying appellants' claims for refund in the amounts of \$3,075.60 and \$1,967.79 for the 2015 and 2016 tax years, respectively.¹

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

ISSUE

Whether the statute of limitations bars appellants' remaining claims for refund for the 2015 and 2016 tax years.

¹ Appellants requested refunds of \$3,283.51 and \$2,805.75 in their claims for refund for the 2015 and 2016 tax years, respectively, and reported the total amount at issue in this appeal as \$6,089.26 (\$3,283.51 + \$2,805.75) in their Request for Appeal Before the Office of Tax Appeals form. However, prior to appellants' filing of this appeal, FTB issued refunds of \$207.91 for the 2015 tax year and \$837.96 for the 2016 tax year, leaving \$3,075.60 and \$1,967.79 as the amounts at issue in this appeal for the 2015 and 2016 tax years, respectively.

FACTUAL FINDINGS2015 Tax Year

1. Appellants did not timely file a California income tax return for the 2015 tax year.
2. FTB received information indicating that both appellants earned sufficient income to require them to file tax returns for the 2015 tax year. Consequently, FTB issued Requests for Tax Returns (Requests) to each appellant, individually, but appellants did not timely file their tax returns or respond to the Requests.
3. Following appellants' nonresponse to the Requests, FTB issued Notices of Proposed Assessment (NPAs) to each appellant, individually, based on the information available to it. Appellants did not timely respond to the NPAs, so the proposed liabilities became final.
4. Between April 15, 2016, and September 9, 2020, FTB collected or received 33 payments, totaling \$4,328.60, and applied them towards appellants' liability for the 2015 tax year.² FTB also collected five payments between September 15, 2020, and November 24, 2020, totaling \$219.85, which were applied towards appellants' liability for the 2015 tax year.³
5. On September 15, 2021, appellants ultimately filed their 2015 joint tax return, reporting total tax of \$966, which FTB accepted and treated as a claim for refund.
6. FTB determined that appellants had a total overpayment of \$3,297.96 for the 2015 tax year.⁴ Of this amount, FTB determined that appellants were entitled to a refund of the payments made or received between September 15, 2020, and November 24, 2020, totaling \$219.85. FTB applied \$14.45 to appellants' 2018 tax year and refunded the balance of \$205.40, plus interest of \$2.51, for a total refund of \$207.91 paid to appellants on February 1, 2022.

² This amount consists of withholdings of \$1,124.00 applied to appellants' 2015 tax year effective April 15, 2016; a payment of \$431.06 on June 20, 2018; a payment of \$273.54 on July 5, 2018; 10 payments of \$150.00 between May 3, 2018, and July 18, 2019; and 20 payments of \$50.00 between December 2, 2019, and September 8, 2020.

³ This amount consists of four payments of \$50.00 between September 15, 2020, and November 12, 2020, and one payment of \$19.85 on November 24, 2020.

⁴ This amount consists of appellants' total payments of \$4,548.45, plus interest allowed by FTB in the amount of \$2.51, less appellants' total self-reported tax of \$966.00 and a collection cost recovery fee of \$287.00.

7. FTB denied appellants' remaining claim for refund in the amount of \$3,075.60. This timely appeal followed.

2016 Tax Year

8. Appellants did not timely file a California income tax return for the 2016 tax year.
9. FTB received information indicating that both appellants earned sufficient income to require them to file tax returns for the 2016 tax year. Consequently, FTB issued Demands for Tax Returns (Demands) to each appellant, individually, but appellants did not timely file their tax returns or respond to the Demands.
10. Following appellants' nonresponse to the Demands, FTB issued NPAs to each appellant, individually, based on the information available to it. Appellants did not timely respond to the NPAs, so the proposed liabilities became final.
11. Between April 15, 2017, and October 9, 2019, FTB collected 11 payments, totaling \$6,451.13, and applied them towards appellants' liability for the 2016 tax year.⁵ FTB also collected 17 payments between November 24, 2020, and September 7, 2021, totaling \$830.15, which were applied towards appellants' liability for the 2016 tax year.⁶
12. On September 15, 2021, appellants ultimately filed their 2016 joint tax return, reporting total tax of \$2,976, which FTB accepted and treated as a claim for refund.
13. FTB determined that appellants had a total overpayment of \$2,805.75 for the 2015 tax year.⁷ Of this amount, FTB determined that appellants were entitled to a refund of the payments made between November 24, 2020, and September 7, 2021, totaling \$830.15, in addition to \$7.81 in accrued interest on appellants' overpayment. Therefore, FTB issued an \$837.96 refund to appellants on February 1, 2022.
14. FTB denied appellants' remaining claim for refund in the amount of \$1,967.79. This timely appeal followed.

⁵ This includes withholdings of \$2,190 applied to appellants' 2016 tax year effective April 15, 2017.

⁶ This amount consists of one payment of \$30.15 on November 24, 2020, and 16 payments of \$50.00 between December 10, 2020, and September 7, 2021.

⁷ This amount consists of appellants' total payments of \$7,281.28, plus interest allowed by FTB in the amount of \$7.81, less appellants' self-reported total tax of \$2,976.00, and penalties, fees, and interest totaling \$1,507.34.

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 relevant 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 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.) Beyond narrow exceptions not relevant here,⁸ 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.*)

Here, because appellants did not file their 2015 or 2016 tax return pursuant to a valid extension of time to file, the first four-year statute of limitations under R&TC section 19306(a) does not apply. Consequently, appellants' claims for refund can only be considered timely if they were filed within four years of the date the returns were due, or within one year from the date of overpayment.

Appellants' 2015 and 2016 tax returns were due April 15, 2016, and April 15, 2017, respectively. To be timely under the second four-year statute of limitations, appellants were required to file their claims for refund for the 2015 and 2016 tax years by July 15, 2020, and May 17, 2021, respectively.⁹ However, appellants filed their 2015 and 2016 tax returns, which

⁸ R&TC section 19316 provides a narrow exception for suspending the statute of limitations where an individual taxpayer is deemed "financially disabled." A financially disabled taxpayer is an individual taxpayer who is unable to manage financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1).)

⁹ Appellants' claim for refund for the 2015 tax year was originally due April 15, 2020, under the second four-year statute of limitations. However, due to the COVID-19 State of Emergency, FTB postponed the deadline to July 15, 2020, for all taxpayers whose refund claims for the 2015 tax year were originally due between March 12, 2020, and July 15, 2020. (See FTB Notice – 2020-02 (*Time Sensitive Acts Postponed Due to the COVID-19 State of Emergency*), available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.) FTB similarly postponed the deadline for individual taxpayers to file refund claims for the 2016 tax year to May 17, 2021. (See *State Postpones Deadline For Claiming 2016 Tax Refunds to May 17, 2021*, April 26, 2021, available at:

FTB treated as claims for refund, on September 15, 2021. Therefore, appellants' claims for refund are time barred under the second four-year statute of limitations.

Alternatively, a claim for refund may be allowed if it is filed within one year from the date of overpayment. (R&TC, § 19306(a).) Having filed their claims for refund (via their 2015 and 2016 tax returns) on September 15, 2021, appellants are entitled to a refund or credit only for the payments they made between September 15, 2020, and September 15, 2021. Within that period, appellants made payments totaling \$219.85 toward the 2015 tax year, and \$830.15 for the 2016 tax year, all of which were refunded or credited to appellants.

All payments collected or received by FTB prior to September 15, 2020, are time barred under the one-year statute of limitations. Pursuant to R&TC section 19002(c)(1), appellants' 2015 and 2016 withholdings are deemed paid on the original due date of the return (here, April 15, 2016, and April 15, 2017, respectively). Thus, any refund stemming from appellants' withholdings is also barred by the one-year statute of limitations.

On appeal, appellants assert it is unfair that they are not being refunded the entire amount of their overpayment. However, the language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) Appellants were required to file their claims for refund within the statutory periods, even if the tax was alleged to have been erroneously or wrongfully collected. (*Ibid.*) Having failed to do so, appellants are not entitled to the remainder of their overpayments.

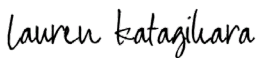
<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

HOLDING


The statute of limitations bars appellants' claims for refund for payments made, or collected, prior to September 15, 2020.

DISPOSITION

FTB's action is sustained.

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Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:

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Richard Tay
Administrative Law Judge

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 5/3/2023