

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. CUSENZA AND) OTA Case No. 220410244
G. CUSENZA)
_____)

OPINION

Representing the Parties:

For Appellants: Andrew Free, CPA

For Respondent: Carolyn S. Kuduk, Tax Counsel III

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Cusenza and G. Cusenza (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$11,978 for the 2016 tax year.

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

ISSUE

Whether appellants’ claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On October 9, 2017, appellants filed their California Resident Income Tax Return (Form 540) for the 2016 tax year. Appellants reported payments in excess of the reported tax. Appellants requested that the overpayment of tax be transferred to their 2017 tax year.
2. The J. Cusenza Family Trust was a partner in Primexx Energy Opportunity Fund, LP (PEOF) during the 2016 tax year. PEOF filed its 2016 Partner’s Share of Income Deductions, Credits, etc (Form 565) with its Schedule K-1 (Partner’s Share of Income,

- Deductions, Credits, and Other Items) on September 14, 2017.¹ Appellants completed their Form 540 based on information in the Form 565.
3. On September 13, 2021, FTB received PEOF's amended Form 565 for the 2016 tax year.
 4. On December 27, 2021, appellants filed an amended California Resident Income Tax Return (Form 540X) for the 2016 tax year. On the Form 540X, appellants reported a reduced tax amount stemming from the amended Form 565 from PEOF and claimed the refund at issue.
 5. On January 27, 2021, FTB denied appellants' claim for refund based on its determination that the refund was barred by the statute of limitations.
 6. Appellants timely appealed to the Office of Tax Appeals (OTA).

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. (R&TC, § 19306(a).) R&TC section 19322 provides that every refund claim shall be in writing, signed by his or her representative, and shall state the specific grounds. A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Appellants argue that they are entitled to a refund for the 2016 tax year. According to appellants, PEOF timely filed partnership-level administrative adjustment requests under the Tax Equity and Fiscal Responsibility Act for 2016. Appellants do not explain how their actions or the action of PEOF would extend the statute of limitations for claiming a refund.

Here, appellants' original Form 540 was filed within the extended due date on October 9, 2017. Under the first prong of R&TC 19306, appellants' Form 540X, or claim for refund, was filed on December 27, 2021. The statute of limitations under the first prong expired on October 9, 2021. Under the second prong, the deadline to file a timely claim for refund for

¹ Appellants, as individuals, are not identified on the Form 565, but instead a trust under a similar name is identified.

2016 was postponed until May 17, 2021.² Here, however, appellants filed their claim for refund after May 17, 2021. Under the third prong, the one-year statute of limitations for filing a claim for refund begins to run on the date of the alleged overpayment. (R&TC, § 19002(c)(1); *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-0187P.) Appellants' only payments were made in 2016; therefore, appellants did not meet the one-year deadline. Thus, OTA finds that appellants' claim for refund for the 2016 tax year is barred by the statute of limitations.

HOLDING

Appellants' claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Josh Aldrich

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Josh Aldrich
Administrative Law Judge

We concur:

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Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

Andrea L.H. Long

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 5/10/2023

² See: <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>.