

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
 M. P. KAWECKI AND)
 M. KAWECKI)
 _____)

OTA Case No. 220810991

OPINION

Representing the Parties:

For Appellants: M. P. Kawecki

For Respondent: Grace A. Power, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. P. Kawecki and M. Kawecki (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of \$1,624.57, \$1,449.47, \$1,794.30, and \$379.00, for the 2011, 2014, 2015, and 2017 tax years, respectively.

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

ISSUE

Whether appellants' claims for refund for the 2011, 2014, 2015, and 2017 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants filed their 2011, 2014, 2015, and 2017 California income tax returns on November 1, 2012, October 13, 2015, October 15, 2016, and May 29, 2019, respectively. While the 2014 and 2015 returns were timely filed, the 2011 and 2017 returns were filed after the extended due date.
2. Appellants' last payments for the 2011, 2014, and 2015 tax years were made on July 23, 2018, August 22, 2016, and May 22, 2019, respectively. Appellants did not

make payments for the 2017 tax year because they had sufficient income tax withheld to satisfy their tax liability.

3. Appellants filed amended returns for tax years 2011, 2014, 2015, and 2017 on May 9, 2022, May 15, 2022, May 15, 2022, and May 24, 2022, respectively, requesting refunds for overpayments.
4. FTB accepted appellants' amended returns and treated them as claims for refund totaling \$5,247.34.¹ FTB determined that the claims were filed outside of the statute of limitations period and denied appellants' claims for refund.

DISCUSSION

The statute of limitations to file a refund claim 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 refund claim 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).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*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.)

2011

For the 2011 tax year, the four-year statute of limitations expired on April 15, 2016, or four years from the due date of the return without regard to extensions, because appellants did not timely file their return. The one-year statute of limitations period expired on July 23, 2019, because appellants' last payment was made on July 23, 2018. Appellants filed their claim for refund on May 9, 2022. Thus, the claim for refund was filed outside of both statute of limitations periods and no refund may be made.

¹ Appellants' amended returns misstated the amount of payments and withholding made by appellants for tax years 2011, 2014, and 2015, so while the amended tax liability reported on appellants' amended returns was accepted by FTB, the amount of refund due for tax years 2011, 2014, and 2015, was recomputed based on the actual payments on appellants' account.

2014

For the 2014 tax year, the four-year statute of limitations expired on October 13, 2019, four years from the date appellants timely filed their return. The one-year statute of limitations expired August 22, 2017, because appellants' last payment was made on August 22, 2016. Appellants filed their claim for refund on May 15, 2022. Thus, the claim for refund was filed outside of both statute of limitations periods and no refund may be made.

2015

For the 2015 tax year, the four-year statute of limitations expired on October 15, 2020, four years from the date appellants timely filed their return. The one-year statute of limitations expired May 22, 2020, because appellants' last payment was made on May 22, 2019. Appellants filed their claim for refund on May 15, 2022. Thus, the claim for refund was filed outside of both statute of limitations periods and no refund may be made.

2017

For the 2017 tax year, the four-year statute of limitations expired on April 16, 2022, or four years from the due date of the return without regard to extensions, because appellants did not timely file their return. Withholding taxes are deemed paid on the original due date of that year's return. (R&TC, § 19002(c)(1).) The one-year statute of limitations period expired on April 16, 2019, because appellants' last payment is treated as having been made on April 16, 2018, the due date of the return. Appellants filed their claim for refund on May 24, 2022. Thus, the claim for refund was filed outside of both statute of limitations periods and no refund may be made.

Appellants contend their claims for refund should be granted because they acted in good faith by hiring a tax preparer who filed their original tax returns, which overstated appellants' tax liability. However, there is no reasonable cause exception or equitable basis for suspending the statute of limitations to make a claim for refund under these facts. (*Appeal of Benemi Partners, L.P., supra.*)² "Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted." (*Id.*) Accordingly, appellants' claims for refund are barred by the statute of limitations.

² R&TC section 19316 provides an exception for taxpayers who establish that they were financially disabled within the meaning of that statute. Appellants do not contend they suffered from financial disability.

HOLDING

Appellants’ claims for refund for the 2011, 2014, 2015, and 2017 tax years are barred by the statute of limitations.

DISPOSITION

FTB’s actions are sustained.

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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K Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

Date Issued: 5/11/2023