

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. SCARDINA

) OTA Case No. 221011612
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OPINION

Representing the Parties:

For Appellant: Obaid Asif, CPA

For Respondent: Joel M. Smith, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Scardina (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,560.89 for the 2017 taxable year.

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

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not file a timely 2017 California Income Tax Return but did file Sales and Use Tax returns with the California Department of Tax and Fee Administration (CDTFA).¹
2. FTB received information that appellant held a retailer’s sales permit with CDTFA and reported gross sales in 2017. FTB requested that appellant file an income tax return or explain why he was not required to do so.

¹ Formerly the State Board of Equalization.

3. Appellant did not respond, and on September 27, 2019, FTB issued a Notice of Proposed Assessment (NPA) estimating appellant's 2017 income based on appellant's reported gross sales.²
4. FTB issued various collection notices to appellant on December 23, 2019, February 5, 2020, and March 16, 2020.
5. Appellant did not respond to any of the correspondence, and FTB collected \$14,877.89³ from appellant on September 29, 2020.
6. Appellant filed a California tax return for taxable year 2017 on July 11, 2022, reporting no tax due.
7. FTB treated appellant's tax return as a claim for refund which it denied based on the expiration of the statute of limitations.
8. Appellant timely appealed FTB's action.

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 pertinent 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 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).) 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.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P, citing *U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling of the federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) A taxpayer's untimely filing of a claim for any reason bars a refund even

² The NPA became final, and the estimate is not at issue in this appeal. Thus, it will not be discussed further.

³ FTB's denial of appellant's claim for refund is in the amount of \$14,560.89. The \$317.00 difference between the amount collected and the claim for refund denial is the non-refundable collection cost recovery fee, which FTB imposed for appellant's 2017 taxable year.

if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

The first statute of limitations period does not apply because appellant did not file a 2017 return on or before the extended due date of October 15, 2018. The second statute of limitations period expired on April 15, 2022, four years from the original due date for the 2017 return. The third statute of limitations period expired on September 29, 2021, one year after FTB collected \$14,877.89 from appellant. Appellant's claim for refund filed on July 11, 2022, is after each of these dates and is therefore untimely and barred by the statute of limitations.

Appellant appears to make reasonable cause arguments, requesting a refund "due to COVID delays, and deaths in the family."⁴ However, as described above, the law does not provide for tolling the statute of limitations based on reasonable cause or any other equitable basis. Accordingly, appellant has not established a legal basis for tolling the statute of limitations.⁵

⁴ Appellant also states that \$14,560.89 was taken (presumably by FTB) in 2019, just before the COVID-19 pandemic. The record on appeal reflects a single payment for 2017: \$14,877.89 on September 29, 2020.


⁵ Appellant has not asserted that the statute of limitations period was tolled due to appellant's financial disability pursuant to R&TC section 19316. Moreover, the appeal record does not include evidence that appellant was financially disabled within the meaning of that statute.

HOLDING

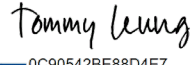
Appellant’s claim for refund is barred by the statute of limitations.

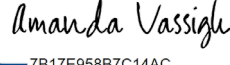
DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

0C90542BE88D4E7
Tommy Leung
Administrative Law Judge

DocuSigned by:

7B17E958B7C14AC
Amanda Vassigh
Administrative Law Judge

Date Issued: 5/10/2023