

3. Respondent processed appellant's amended return and accepted the return as filed, which respondent treated as a claim for refund. Respondent issued a Refund Claim Denial denying appellant's requested refund.
4. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if filed within the extended filing period; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. For purposes of computing the statute of limitations on refund claims, estimated tax payments are deemed to have been paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(2).) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund within the statute of limitations, even when it is later shown that the tax was not owed in the first place, bars the taxpayer from later receiving a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *U.S. v. Brockamp* (1997) 519 U.S. 347.) Fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Here, appellant timely filed the original 2016 return within the extended due date.¹ Because appellant's original return was filed on September 29, 2017, appellant was required to file the amended return by September 29, 2021. Under the alternative one-year statute of limitations, appellant must have filed the refund claim no later than April 15, 2018, which is one year after the estimated payments are deemed paid. Appellant did not file the amended return until December 30, 2021, which is after the expiration of both the four-year and one-year statutes of limitations.

Appellant concedes that the California Revenue and Taxation Code does not explicitly conform to Internal Revenue Code (IRC) section 6511(d)(2), which allows a seven-year statute of limitations for NOL carrybacks in certain circumstances. However, appellant argues that nothing in the California Revenue and Taxation Code prevents California from conforming to

¹ Respondent allows an automatic six-month extension to file if the tax return is filed within six months of the original due date. (Cal. Code Regs., tit. 18, § 18567.)

the federal statute. In support, appellant asserts that respondent's website and Publication 1001 do not mention that California does not conform to IRC section 6511(d)(2). Appellant argues that failing to conform to the federal statute creates an unfair and unreasonable outcome for California taxpayers. Additionally, appellant asserts that the California Revenue and Taxation Code does not explicitly state that California does not conform to this federal provision. As such, appellant argues that California should conform to and follow IRC section 6511(d)(2).

The language of R&TC section 19306 is mandatory, and absent a grant of statutory authority, the Office of Tax Appeals (OTA) has no basis to grant a refund outside the statute of limitations. (*Appeal of Estate of Gillespie, supra.*) Statutes of limitations must be interpreted with a strict construction in favor of the taxing agency. (*Badaracco v. Commissioner* (1984) 464 U.S. 386, 391.) Even if, as appellant asserts, it would be unfair to California taxpayers to have an unfavorable tax treatment on their California return when compared to their federal return, OTA cannot "contort plain language" based on policy concerns, but must give effect to the statute as written. (*Shockley v. Commissioner* (11th Cir. 2012) 686 F.3d 1228, 1235.)

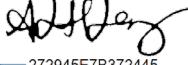
Appellant's criticism of respondent's website and publication is also unavailing. When respondent's instructions are alleged to be unclear or misleading, taxpayers must follow the law and not the instructions. (*Appeal of Sedillo*, 2018-OTA-101P.) Taxpayers should also not regard respondent's tax instruction pamphlets or its website as sources of authoritative law. (*Ibid.*) Respondent is an administrative agency, and it does not have the legal authority to interpret a statute in such a way as to change its meaning or effect. (*Appeal of Collamore* (72-SBE-031) 1972 WL 2664.) Therefore, there is no basis to extend the statute of limitations without an explicit law to allow it.

HOLDING

Appellant did not timely file a claim for refund for the 2016 tax year.


DISPOSITION

Respondent’s action denying the claim for refund is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 5/16/2023