

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**S. QUARTO**

) OTA Case No. 221111822  
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**OPINION**

Representing the Parties:

For Appellant: S. Quarto

For Respondent: Adam J. Susz, Attorney V

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Quarto (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$874 for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether the statute of limitations bars appellant’s claim for refund.

**FACTUAL FINDINGS**

1. Appellant filed a California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2017 tax year on May 11, 2022. On her 2017 return, appellant reported total tax of \$0. After reporting an income tax withholding credit of \$874, appellant claimed overpaid tax of \$874 and requested a refund of that amount. Appellant signed her 2017 return and dated it April 27, 2022.

2. FTB accepted appellant's return but denied her claim for refund of \$874 because it was untimely. In a Statute of Limitations notice dated August 18, 2022, FTB informed appellant that the statute of limitations barred her claim for refund.
3. This timely appeal followed.

### 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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) A taxpayer's untimely filing of a claim for any reason bars a refund even 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.*)

On appeal, appellant argues that the statute of limitations does not bar her claim for refund. Appellant contends that she mailed her 2017 tax return to FTB in January 2021, which is within the four-year statute of limitations. She also contends that the statute of limitations expired because FTB did not process her 2017 return until August 2022, which is when she received Statute of Limitations notice dated August 18, 2022.

It is not credible that appellant mailed her 2017 return in January 2021, because appellant's signature on her 2017 tax return is dated April 27, 2022. Appellant does not address this inconsistency and she has not produced proof of the date she mailed her 2017 return, such as a registered or certified mail receipt. Most importantly, FTB's records show that appellant filed her 2017 return on May 11, 2022. To the extent that appellant argues that FTB caused the statute of limitations to expire because it failed to process her 2017 return until August 2022, the lapse

of time between the date appellant filed the claim for refund and the date when FTB issued the Statute of Limitations notice does not give rise to an exception to the statute of limitations. Here, FTB issued the notice approximately three months after appellant filed her 2017 return. Therefore, the Office of Tax Appeals must examine whether to treat appellant's 2017 return as a timely claim for refund under the four-year and the one-year statutes of limitations.

#### Four-Year Statutes of Limitations

For purposes of R&TC section 19306, a return filed within four years from the last day prescribed for filing the return that shows a credit for income tax withholdings or estimated tax payments in excess of one dollar shall be treated as a timely refund claim for the excess amount. (R&TC, § 19307.)

Appellant did not timely file her 2017 return pursuant to the extended due date per R&TC section 18567. Thus, the first of the two four-year statutes of limitations described in R&TC section 19306(a) is inapplicable. The second four-year statute of limitations runs from the original due date, April 15, 2018. (R&TC, § 19306(a).) For the 2017 tax year, the second four-year statute of limitations expired on April 15, 2022 (i.e., four years from the 2017 return's due date of April 15, 2018, regardless of any extension). Appellant filed her 2017 return/claim for refund on May 11, 2022. Accordingly, the second four-year statute of limitations bars appellant's claim for refund.

#### One-Year Statute of Limitations

Regarding the one-year statute of limitations described in R&TC section 19306(a), the overpayment at issue is a withholding payment of \$874 for the 2017 tax year. "For purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return." (Cal. Code Regs., tit. 18, § 19002(d)(1); see also R&TC, § 19002(c)(1), *Appeal of Jacqueline Mairghread Patterson Trust, supra.*)

Here, the original due date for the 2017 tax return is April 15, 2018, and one year from that date is April 15, 2019. Appellant filed her 2017 return on May 11, 2022, which is more than one year after the withholding credit was deemed paid. Accordingly, the one-year statute of limitations bars her claim for refund.

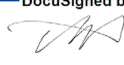
For the reasons described above, none of the statutes of limitations described in R&TC section 19306(a) allows appellant’s claim for refund.

HOLDING

The statute of limitations bars appellant’s claim for refund.

DISPOSITION

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

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Andrew Wong  
Administrative Law Judge

Date Issued: 5/3/2023