

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22029626
M. WEINSTEIN AND)
Y. WANG)
_____)

OPINION

Representing the Parties:

For Appellants: M. Weinstein and Y. Wang

For Respondent: Eric R. Brown, Tax Counsel III

For the Office of Tax Appeals: Julian Adams, Graduate Student Assistant

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Weinstein and Y. Wang (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$6,411 for the 2016 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals decides this matter based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellants attempted to timely file their 2016 California tax return on October 16, 2017, using a tax and accounting software program.
2. FTB’s e-file system rejected the return because appellants entered an incorrect response to a security question regarding their prior year’s adjusted gross income. Within approximately one hour of submitting the return, the tax and accounting software program retrieved FTB’s notice of rejection of appellants’ return.
3. Appellants successfully filed their 2016 California tax return on November 6, 2017.

4. Appellants filed a claim for refund for the 2016 tax year on October 15, 2021, seeking a refund of \$6,411 by carrying back a 2017 net operating loss.
5. FTB denied the refund claim on the basis that it is barred by the statute of limitations.
6. This timely appeal followed.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations provides 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 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 contend that they timely filed their 2016 return on October 16, 2017, and therefore their refund claim filed on October 15, 2021, was filed within the statute of limitations period. However, although appellants attempted to file their original return on October 16, 2017, the record establishes that FTB's e-file system rejected the return because appellants or their accountant submitted an incorrect response to a security question. The record further establishes that within approximately one hour of submitting the return, the tax and accounting software program retrieved FTB's notice of rejection.

Accordingly, the first statute of limitations period is not applicable because appellants did not file their 2016 California tax return by the extended due date. There is no reasonable cause exception to the statute of limitations; therefore, appellants' failed attempt to timely file their return does not toll the statute of limitations. (*Appeal of Gillespie, supra.*)

The second statute of limitations period for the 2016 tax year expired on May 17, 2021.¹ As noted above, appellants filed their refund claim on October 15, 2021, after the second statute of limitations period expired.

¹ For the 2016 tax year, the statute of limitations generally would have expired on April 15, 2021. However, due to the COVID-19 pandemic, FTB treated refund claims filed by May 17, 2021, as timely. (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>.)

Lastly, under the third statute of limitations period, appellants are entitled to a refund of only those payments made within one year of filing the refund claim—that is, payments made on or after October 15, 2020. The record does not reflect any payments made for the 2016 tax year on or after October 15, 2020. Therefore, appellants are not entitled to a refund of any amount under the third statute of limitations period.

Accordingly, appellants’ claim for refund is barred by the statute of limitations.

HOLDING

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

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

We concur:
DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

Date Issued: 6/15/2023