

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:)
R. MORTENSEN) OTA Case Nos. 221011720, 221212047
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OPINION

Representing the Parties:

For Appellant: R. Mortensen
For Respondent: Paige Chang, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Mortensen (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$1,492 and \$1,113 for the 2016 and 2017 tax years, respectively.

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

ISSUE

Whether appellant’s claims for refund are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant untimely filed his California Resident Income Tax Return (return) dated June 21, 2022, for the 2016 and 2017 tax years. FTB treated the 2016 return as a claim for refund of \$1,492, and the 2017 return as a claim for refund of \$1,113.¹
2. On July 18, 2022, and July 20, 2022, FTB issued a Statute of Limitations letter that denied appellant’s claim for refund for the 2017 and 2016 tax years, respectively.
3. This timely appeal followed.

¹ Both returns were received by FTB on June 27, 2022.

DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law, for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021 OTA-196P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(c).)

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 the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020 OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) If a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Federal courts have stated that 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 Cornbleth, supra*, citing *Prussner v. U.S.*, (7th Cir. 1990) 896 F.2d 218, 222.)

In this appeal, appellant's return for the 2016 tax year was due on April 15, 2017. Similarly, appellant's return for the 2017 tax year was due on April 15, 2018. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file his returns within the extended filing period.

For the 2016 tax year, the second four-year statute of limitations period to file a claim for refund expired on April 15, 2021. In response to COVID-19, however, FTB postponed the due dates for individuals to file a refund claim until May 17, 2021.² Appellant's return for the 2016

² 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>.

tax year, which was treated as a claim for refund, was filed on June 21, 2022, and is, therefore, filed after the second four-year statute of limitations period expired. For the 2017 tax year, the second four-year statute of limitations period to file a claim for refund expired on April 15, 2022. Appellant's return for the 2017 tax year, which was also treated as a claim for refund, was filed on June 21, 2022, and is therefore filed after the second four-year statute of limitations period expired.

The one-year statute of limitations period described in R&TC section 19306(a) is one year from the date of overpayment. Here, appellant's only payments are his withholding credits, which are deemed paid on April 15, 2017, for the 2016 tax year and April 15, 2018, for the 2017 tax year. (R&TC, § 19002(c)(1); *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-0187P.) Thus, the one-year statute of limitations period expired on April 15, 2018, and April 15, 2019, respectively. Appellant argues that his payments were timely because he continuously paid into his account through employment income and retirement income withholdings, and those accounts remain active. However, appellant's characterization of his income tax account as a single perpetual unit is misplaced. Each tax year stands alone, and each taxpayer has a separate account for each tax year. (*Millennium Dental Technologies, Inc.*, 2019-OTA-0178P.) Accordingly, OTA finds that appellant's claims for refund are barred by the statute of limitations.

HOLDINGS

Appellant’s claims for refund are barred by the statute of limitations.

DISPOSITION

FTB’s actions in denying appellant’s claims for refund are sustained.

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 6/6/2023