

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. MEREDITH

) OTA Case No. 221111798
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: K. Meredith

For Respondent: Alisa L. Pinarbasi, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Meredith (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$777.18 for the 2017 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter 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.
2. FTB obtained information that appellant had wage and dividend income sufficient to require appellant to file a 2017 tax return. FTB issued appellant a Demand for Tax Return.
3. Appellant did not reply, and on November 1, 2019, FTB issued a Notice of Proposed Assessment (NPA) that estimated appellant’s taxable income based on the wage and dividend income information and proposed to assess tax of \$193.00 after applying appellant’s withholding credits (total tax of \$410.00 less withholding credits of \$217.00),

- a late-filing penalty of \$135.00, a demand to file penalty of \$102.50, a filing enforcement fee of \$93.00, and applicable interest.
4. Because appellant did not respond to the NPA, it became final. FTB applied appellant's 2017 taxable year withholdings of \$217.00 and, on April 21, 2020, transferred \$560.18 from appellant's 2019 taxable year, satisfying appellant's balance due for 2017.
 5. On September 29, 2022, appellant filed a California income tax return for 2017, reporting \$0 total tax and requesting a refund of \$217.¹
 6. FTB accepted the return as filed, treated it as a claim for refund for \$777.18, and denied appellant's claim for refund due to the expiration of the statute of limitations.
 7. This timely appeal followed.

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 equitably toll 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 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

¹ On the tax return, appellant made a hand-written note indicating that the return was a copy, and that the original was mailed on May 1, 2020. OTA held a conference to inquire as to whether appellant had evidence of mailing the return on an earlier date. Appellant stated that she did not have any evidence, such as a certified mail receipt.

fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Because appellant did not file a timely tax return, the first four-year statute of limitations period is inapplicable. Appellant also did not timely file a refund claim within the second four-year statute of limitations period, which expired on April 15, 2022, four years from the original due date of appellant's 2017 return. Appellant's withholdings of \$217.00 are deemed paid on the due date for the 2017 tax return, i.e., on April 15, 2018. (R&TC, § 19002(c)(1).) For that payment, the one-year statute of limitations expired on April 15, 2019. FTB transferred \$560.18 from appellant's 2019 taxable year on April 21, 2020.² For that payment, the one-year statute of limitations expired on April 21, 2021. Appellant requested a refund on September 29, 2022, after the expiration of each of the statute of limitations periods. Accordingly, appellant is not entitled to a refund.

Appellant does not disagree with this conclusion but rather asserts that her employer incorrectly classified appellant as an independent contractor in 2014. Appellant states that she was unable to resolve this issue because she could not reach FTB, then the COVID-19 pandemic occurred, and appellant "forgot" to file the 2017 tax return. Appellant further asserts that she is experiencing extreme financial hardship. However, despite appellant's circumstances, reasonable cause is not a basis for tolling the statute of limitations. Enforcement of the statute of limitations is mandatory. (R&TC, § 19306(a) ["[n]o credit or refund *shall* be allowed" after the statute of limitations expires]; italics added.) Appellant has not established that she is entitled to a refund of overpaid tax.


² R&TC section 19383 provides that payments that are transferred from another taxable year are effective as of the date the payments are transferred.

HOLDING

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

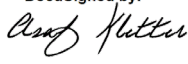
DISPOSITION

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

DocuSigned by:

0CC6C6ACCC6A44D

Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

D17AEDDCAAB045B

Asaf Kletter
Administrative Law Judge

DocuSigned by:

3AF5C32BB93B456

Kenneth Gast
Administrative Law Judge

Date Issued: 5/25/2023