

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

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

) OTA Case No. 221111826  
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**OPINION**

Representing the Parties:

For Appellant: Kent S. Pomeroy

For Respondent: Andrea Watkins, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Flores (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,149.26 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 for taxable year 2017 barred by the statute of limitations?

**FACTUAL FINDINGS**

1. Appellant held an active cosmetology license in 2017 but did not file a timely California Resident Income Tax Return for the 2017 taxable year.
2. FTB sent appellant a Request for Tax Return on July 5, 2019. Appellant did not respond.
3. On October 21, 2019, FTB issued a Notice of Proposed Assessment proposing to assess tax of \$772, a late-filing penalty of \$193, and applicable interest. Appellant did not respond, and the proposed assessment became a final liability.
4. FTB took collection action and imposed a \$316 collection cost recovery fee.
5. FTB collected a total of \$1,465.26 between April 8, 2021, and June 22, 2021.

6. Appellant filed an untimely California tax return for taxable year 2017 on September 13, 2022, requesting a refund of overpaid tax.<sup>1</sup>
7. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.
8. 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 fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

For taxable year 2017, the first statute of limitations period does not apply because appellant did not file a return within a valid extension period. The second statute of limitations period expired on April 15, 2022, four years after the original due date of the 2017 return on April 15, 2018. FTB received payments totaling \$1,465.26. The latest of these payments was made on June 22, 2021. As a result, the one-year statute of limitations period expired on June 22, 2022, or earlier, with respect to these payments. Appellant requested a refund on September 13, 2022, nearly three months after the expiration of the third statute of limitations

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<sup>1</sup> Appellant requested a refund of \$1,425.00. FTB's denied appellant a refund of \$1,149.26 (total payments received of \$1,465.26 minus a \$316.00 collection cost recovery fee).

period. Appellant's claim for refund for 2017 was properly denied due to the expiration of the statute of limitations.

Appellant asserts that an FTB representative encouraged her to set up an appointment to speak with someone, which appellant was unable to do because it was difficult to reach FTB personnel at the outset of the COVID-19 pandemic. Appellant contends she was instructed to set up a meeting with an FTB representative rather than file a 2017 tax return in order to stop FTB's collections process.

However, appellant's assertions do not explain the failure to file a return or provide FTB with information explaining why she did not have a filing requirement for the 2017 tax year when the Request for Tax Return and Notice of Proposed Assessment were issued to appellant in 2019. Appellant also has not explained why she waited until September 13, 2022, to file a return. Moreover, appellant's contentions constitute reasonable cause arguments. OTA may not grant relief from the statute of limitations based on reasonable cause or on any other equitable basis. Enforcement of the statute of limitations is mandatory.<sup>2</sup> (R&TC, § 19306 [no credit or refund *shall* be allowed after the statute of limitations expires]; italics added.) This is true even when, as here, the tax was not owed in the first place. (*Appeal of Benemi Partners, L.P., supra.*) *Therefore*, appellant has not shown that her claim for refund was filed prior to the expiration of the statute of limitations.

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<sup>2</sup> Narrow exceptions to the tolling of the statute of limitations do not apply to this appeal. (See R&TC, § 19316.)

HOLDING

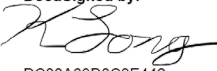
Appellant’s claim for refund for taxable year 2017 is barred by the statute of limitations.


DISPOSITION

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

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Keith T. Long  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 6/7/2023