

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220410204
D. PATEL AND)
J. PATEL)
_____)

OPINION

Representing the Parties:

For Appellants: Debbie Robertson Shaw, CPA

For Respondent: David Muradyan, Tax Counsel III

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Patel and J. Patel (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$13,531 for the 2015 tax year.

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

ISSUE

Whether appellants’ claim for refund was timely.

FACTUAL FINDINGS

1. On October 12, 2016, appellants timely filed their joint 2015 California income tax return.
2. Approximately five years later, on October 15, 2021, appellants filed an amended 2015 California income tax return (Amended Return) reporting an overpayment of \$13,531 based on the deduction of a net operating loss (NOL) carryback from the 2017 tax year.
3. Respondent processed appellants’ Amended Return as a claim for refund, which it denied on the grounds that it was untimely filed.
4. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) sets forth the general limitation period for filing a claim for credit or refund, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment. The requirements of R&TC section 19306 are to be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Except in very limited situations which are not present here,¹ a taxpayer's untimely filing of a claim for *any reason* bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) “Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted.” (*Ibid.*)

Appellants do not dispute that their Amended Return was filed outside the above specified periods and, therefore, it was untimely pursuant to R&TC section 19306. Rather, appellants argue that the timeliness of their claim for refund should instead be determined pursuant to Internal Revenue Code (IRC) section 6511(d)(2)(A),² which provides for a three-year limitation period beginning on the date the return for the tax year generating the NOL carryback was due. Appellants contend that because respondent's Publication 1001 – Supplemental Guidelines to California Adjustments does not indicate any differences between California and federal tax law with respect to the limitation period for filing a claim for refund, their claim should be accepted as timely pursuant to the federal statute.

While it is true that California's income tax law generally is based upon federal income tax law (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 904), appellants are mistaken as to the applicability of IRC section 6511 here. California's income tax law, including its statutory administrative provisions where R&TC section 19306 is found, neither incorporates by reference IRC section 6511 nor contains any special statute of limitations provision relating to NOL carrybacks. (Compare R&TC, § 19306 with IRC, § 6511(d)(2)(A).) Furthermore, it is well

¹ For instance, R&TC section 19316 provides for a narrow exception for suspending the statute of limitations for refund or credit claims where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. There is nothing in the record to suggest that such an exception applies to appellants for any relevant time herein.

² Appellants cite to IRC section 6501(h), which pertains to the time in which a tax assessment may be made as the result of an NOL carryback. Based on their argument, it appears that appellants intended to reference IRC section 6511.

established that the administrative guidance contained in tax agency publications is not binding on the government and cannot change the plain meaning of tax statutes. (*Appeal of Dandridge*, 2019-OTA-458P.) For the foregoing reasons, IRC section 6511(d)(2)(A) is inapplicable here.

HOLDING

Appellants’ claim for refund was untimely.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
88F35E2A835348D

Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 7/5/2023