

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220811080
E. MONTGOMERY AND)
A. MONTGOMERY)
_____)

OPINION

Representing the Parties:

For Appellants: Juliana Fulop, Representative

For Respondent: Hanna Cho, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Montgomery and A. Montgomery (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$13,953 for the 2015 tax year.

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

ISSUE

Whether appellants’ claim for refund for the 2015 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants timely filed their 2015 California resident income tax return on October 10, 2016, within the extension period.
2. On December 27, 2019, FTB notified appellants that they may have \$13,953 of unclaimed nonwage withholding credits for the 2015 tax year. FTB’s letter also stated that appellants need to “file an amended tax return to claim the withholding credit and report the associated income.”

3. On June 14, 2021, appellants filed with FTB a copy of their originally filed return. They did not file an amended return to address the unclaimed withholding credits.
4. On June 1, 2022, appellants filed an amended return with FTB, requesting a refund of the \$13,953 in unclaimed withholding credits.
5. FTB treated the amended return as a refund claim and denied the claim on the basis that it was 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, in relevant part, 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.)

Appellants contend that their tax preparer failed to report the unclaimed withholding credits on their 2015 tax return. When FTB notified appellants of the available credits in 2019, appellants contend “another 2.5 years passed before [their tax preparer] and the FTB could agree on what information was needed to process the claim.” Appellants seem to suggest that the statute of limitations should not apply because FTB waited too long to inform appellants of the available credits and/or took too long to instruct appellants on how to request a refund. In other words, appellants seem to contend that it was FTB’s fault that appellants did not timely file their refund claim.

As an initial matter, FTB does not have a duty to inform taxpayers of an overpayment or to inform taxpayers of the statute of limitations. (*Appeal of Gleason* (86-SBE-113) 1986 WL 22735.) Even if FTB had that duty, FTB advised appellants of the available withholding credits before the statute of limitations expired, and FTB’s letter clearly stated what appellants needed to do to timely claim the withholding credits. While the Office of Tax Appeals (OTA) is sympathetic to appellants’ situation, there is no equitable basis for suspending the statute of

limitations. (*Appeal of Gillespie, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., 2020-OTA-144P.*)


OTA finds that appellants' claim for refund is barred by the statute of limitations because it was not filed within the statute of limitations. The first statute of limitations period expired on October 10, 2020, because appellants timely filed their 2015 California tax return on October 10, 2016. The second statute of limitations period expired on April 15, 2020, but was extended to July 15, 2020, due to COVID-19. (R&TC, § 18566; FTB Notice 2020-02.) Lastly, the third statute of limitations period expired on April 15, 2017, because appellants' withholding credits were deemed paid on the due date of the return, April 15, 2016. (R&TC, § 19002(c)(1).) Appellants filed their refund claim on June 1, 2022, after all three statute of limitations periods expired. Accordingly, appellants' refund claim is barred by the statute of limitations.¹

HOLDING

Appellants' claim for refund for the 2015 tax year is barred by the statute of limitations.

DISPOSITION

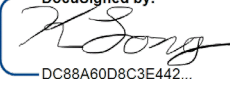
FTB's action is sustained.

DocuSigned by:

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 Ovsep Akopchikyan
 Administrative Law Judge

We concur:

DocuSigned by:

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 Andrew J. Kwee
 Administrative Law Judge

DocuSigned by:

 DC88A60D8C3E442...
 Keith T. Long
 Administrative Law Judge

Date Issued: 6/29/2023

¹ While the time for filing a claim for refund may be suspended if a taxpayer is "financially disabled," as defined in R&TC section 19316, there is no evidence in the record establishing that appellants were financially disabled at any relevant time. Therefore, OTA does not address this issue.