

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
O. STEWART AND) OTA Case No. 220911307
C. CONNIFF)
_____)

OPINION

Representing the Parties:

For Appellants: O. Stewart
C. Conniff
For Respondent: Noel Garcia-Rosenblum, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Stewart and C. Conniff (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$6,075.02 for the 2015 taxable year and \$6,646.51 for the 2016 taxable year, plus applicable interest.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Are appellants’ claims for refund for taxable years 2015 and 2016 barred by the statute of limitations?

FACTUAL FINDINGS

Taxable Year 2015

1. Appellants failed to timely file a 2015 California tax return.
2. Based on information reported to FTB indicating that O. Stewart earned wages sufficient to require him to file a return, FTB issued a notice of proposed assessment (NPA) proposing tax of \$13,478,¹ a late-filing penalty of \$733.25, a demand-to-file penalty

¹ After subtracting appellants’ withholdings of \$10,545, the resulting proposed tax was \$2,933.

- (demand penalty) of \$3,369.50, a filing enforcement fee of \$84.00, and applicable interest.
3. FTB collected a total of \$18,394.96 through withholdings and payments made by appellants. The last of these payments was posted to appellants' 2015 tax account on May 14, 2019.
 4. Appellants filed their 2015 California tax return on May 15, 2022, reporting total tax of \$9,589.00 and requesting a refund of overpayments.
 5. FTB denied appellants' claim for refund based on the expiration of the statute of limitations.²
 6. Appellants filed this timely appeal.

Taxable Year 2016

7. Appellants failed to timely file a 2016 California tax return.
8. Based on information reported to FTB indicating that O. Stewart earned wages sufficient to require him to file a return, FTB issued an NPA proposing tax of \$18,931.00,³ a late-filing penalty of \$700.25, a demand penalty of \$4,732.75, a filing enforcement fee of \$84.00, and applicable interest.
9. FTB collected a total of \$25,036.04 through withholdings and payments. The last payment was posted to appellants' 2016 tax account on July 10, 2019. FTB also transferred \$237.54 (from appellants' 2021 tax year account) to appellants' 2016 tax account on May 17, 2022. That amount was then transferred to appellants' 2017 tax account on June 1, 2022, along with \$0.29 of allowed interest.
10. Appellants filed their 2016 California tax return on May 15, 2022, reporting total tax of \$14,488 and requesting a refund of overpayments.
11. FTB denied appellants' claim for refund based on the expiration of the statute of limitations.⁴

² FTB denied appellants' claim for refund in the amount of \$6,075.02, which consists of withholdings and payments of \$18,394.96 minus tax of \$9,589.00 and penalties, fees, and interest of \$2,730.94.

³ After subtracting \$16,130 of withholding credits, the resulting proposed tax was \$2,801.

⁴ FTB denied appellants' claim for refund in the amount of \$6,646.51, which consists of withholdings and payments of \$25,036.04 minus tax of \$14,448.00, penalties, fees, and interest of \$3,703.99, and \$237.54 (plus \$0.29 allowed interest) which was transferred in from appellants' 2021 taxable year on May 17, 2022, and then transferred out to appellants' 2017 tax account on June 1, 2022.

12. Appellants filed this timely appeal.

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 2015, the first statute of limitations period does not apply because appellants did not file a return within a valid extension period. The second statute of limitations period expired on April 15, 2020,⁵ four years after the original due date of the 2015 return, on April 15, 2016. With respect to the third statute of limitations period, FTB received withholdings of \$10,545.00 and payments totaling \$7,849.96. Appellants' withholdings are deemed paid on the due date for filing the return, April 15, 2016. (R&TC, § 19002(c)(1).) The one-year statute of limitations with respect to a refund of the withholdings expired one year later on April 15, 2017. The latest of the remaining payments was made on May 14, 2019. As a

⁵ In response to the COVID-19 pandemic, FTB postponed the statute of limitations for refund claims that would have expired between March 12, 2020, through July 15, 2020, to July 15, 2020. (See FTB Notice 2020-02 available at <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.) The postponement does not affect the analysis here because appellants filed their claim for refund after July 15, 2020.

result, the one-year statute of limitations period expired on May 14, 2020,⁶ or earlier, with respect to these payments. Appellants requested a refund on May 15, 2022, two years after the expiration of the one-year statute of limitations. As such, appellants' claim for refund for 2015 was properly denied due to the expiration of the statute of limitations.

For taxable year 2016, the first statute of limitations period does not apply because appellants did not file a return within a valid extension period. The second statute of limitations period expired on April 15, 2021,⁷ four years after the original due date of the 2016 return on April 15, 2017. With respect to the third statute of limitations period, FTB received withholdings of \$16,129.00 and payments totaling \$8,907.33. The withholdings are deemed paid on the due date for filing the return, April 15, 2017. (R&TC, § 19002(c)(1).) The one-year statute of limitations with respect to a refund of the withholdings expired one year later on April 15, 2018. The last payment of \$237.54 on May 17, 2022, was due to a transfer to appellants' 2016 tax account from 2021. That payment was transferred to appellants' 2017 tax account on June 1, 2022, and was not available to refund. The last of the remaining payments was made on July 10, 2019. As a result, the one-year statute of limitations period expired on July 10, 2020, or earlier, with respect to these payments. Appellants requested a refund on May 15, 2022, nearly two years after the expiration of the one-year statute of limitations. As such, appellants' claim for refund for 2016 was properly denied due to the expiration of the statute of limitations.

Appellants assert that FTB mailed communications to an address they have not used for four years. Appellants further contend that their time to file a claim for refund has not expired because their claim is deemed filed "on the date the final payment is made on the assessed tax and penalties." Appellants provide sections of the R&TC that they claim support their position that the time to file a claim for refund has not expired.

FTB may send notices to appellants' last known address by first class mail postage prepaid. (R&TC, § 18416.) According to FTB, appellants' 2014 tax return, which immediately preceded appellants' 2015 and 2016 taxable years, used an address in Santa Cruz, California,

⁶ See footnote 3.

⁷ In response to the COVID-19 pandemic, FTB postponed the statute of limitations for 2016 claims for refund from April 15, 2021, to May 17, 2021. (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>.) That postponement does not affect the analysis here because appellants filed a refund claim after May 17, 2021.

which is the same address used on all notices FTB sent to appellants for taxable years 2015 and 2016. Although the 2014 tax return is not in OTA's record, the evidence supports that appellants did not change their address with FTB until sometime in 2018. In their request for refund, signed on September 2, 2022, appellants claim that their address changed four years prior to filing this appeal, to the Oakdale, California address appellants use on appeal. Thus, according to appellants, their address changed some time in 2018. FTB sent notices for taxable years 2015 and 2016 to the address reported on appellants' 2014 tax return. Appellants have not provided evidence showing that they reported the new address to FTB prior to issuance of FTB's notices. As such, FTB correctly used the Santa Cruz, California address as appellants' last-known mailing address for taxable years 2015 and 2016. Even if FTB had sent notices to an incorrect address, it would not relieve appellants of their obligation to file their tax returns by the due date or to file a claim for refund before the expiration of the statute of limitations. Appellants have not explained why they filed their 2015 and 2016 tax returns on May 15, 2022, more than six years after the due date for taxable year 2015 and more than five years after the due date for taxable year 2016.

Appellants cite to R&TC sections 19322.1, 55221, 55222.2, 19301, 19302, and 19307 in support of their claim that the statute of limitations has not expired.⁸ Under R&TC section 19322.1, the law provides for taxpayers to timely claim a refund before the entire tax, penalties, fees, and interest assessed or asserted for the taxable year has been fully paid.⁹ Appellants did not file their claims for refund until *after* full payment of the proposed assessment was made and *after* the statute of limitations had expired, and this statute does not apply to them. R&TC sections 55221 and 55222.2 relate to fees, penalties, and interest assessed or collected under the California Sales and Use Tax Law. They do not apply to refunds of income tax. R&TC sections 19301 and 19302 do not extend the statute of limitations. Instead, those statutes provide that FTB may credit or refund overpayments that are not barred by the statute of

⁸ This Opinion does not address appellants' arguments with respect to the demand penalty. Even if the penalty were abated, appellants would not be entitled to a refund because the statute of limitations expired with respect all overpayments, including penalties.

⁹ Absent R&TC section 19322.1, taxpayers would only be permitted to file a claim for refund *after* they have paid the balance due for the applicable taxable year in full, which in some instances could be after the statute of limitations provided for in R&TC section 19306(a) has expired. R&TC section 19322.1 remedies this by allowing taxpayers to toll the statute of limitations by filing a claim for refund *before* the statute of limitations in R&TC section 19306 expires, even if the balance due for that taxable year has not yet been fully paid.

limitations. R&TC section 19307 does not extend the statute of limitations to the date the return is filed, as asserted by appellants. R&TC section 19307 expressly states that it applies only to a tax return that is filed within four years from the last day prescribed for filing the return.

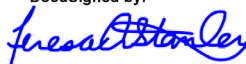
R&TC section 19306 applies to the refund of overpayments of income tax and provides the time within which taxpayers must claim a refund of those overpayments. As discussed above, those limitations periods expired for appellants’ claims for refund for both taxable year 2015 and taxable year 2016. As such, appellants have not established that their claims for refund are not barred by the statute of limitations.

HOLDING


Appellants’ claims for refund for taxable years 2015 and 2016 are barred by the statute of limitations.


DISPOSITION

FTB’s actions denying appellants’ claims for refund are sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 7/18/2023