

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. SUTHERLAND

) OTA Case No. 220911371
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OPINION

Representing the Parties:

For Appellant: K. Sutherland

For Respondent: AnaMarija Antic-Jezildzic, Specialist

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Sutherland (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$7,275.43 for the 2017 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file a 2017 California income tax return (return).
2. FTB obtained information that appellant received income sufficient to prompt a filing requirement for the 2017 tax year.
3. On April 15, 2018, FTB received an electronic web payment, designated as a return payment for the 2017 tax year, in the amount of \$2,247.
4. On April 24, 2019, FTB issued appellant a Demand For Tax Return (demand) for the 2017 tax year. The demand required appellant to respond in one of the following ways: state that he already filed a return; file a return; or explain why he did not have a filing requirement for the 2017 tax year. Appellant did not respond.

5. On December 2, 2019, FTB issued a Notice of Proposed Assessment (NPA) to appellant, which requested a response by January 31, 2020. Appellant did not respond.
6. The NPA became due and payable, and FTB proceeded with collection action. On December 8, 2020, FTB received payments from the collections action in the amount of \$5,330.95. Then, on March 22, 2021, FTB received \$13.48.
7. On July 5, 2022, appellant filed his 2017 return and reported no tax due for the 2017 tax year. FTB processed the return and treated it as a claim for refund for the 2017 tax year. FTB denied appellant's claim for refund.
8. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant asserts that FTB levied the amount at issue from his bank account even though he did not have a tax liability for the 2017 tax year. Appellant states that “I was late due to a combination of reasons outside of my control. The deadline was missed by around 47 days.” Appellant explains that he has very limited financial resources; his accountant was on an extended holiday and was unable to meet the deadline even though appellant provided him with the necessary information; and then, appellant contracted COVID-19 with long term effects. However, there is no reasonable cause or equitable basis for suspending the statute of limitations.¹ (*Appeal of Benemi Partners, L.P.*, *supra.*)

Here, appellant filed the claim for refund after the statute of limitations expired. The first four-year state of limitations period does not apply in this case because appellant did not timely

¹ R&TC section 19316 provides an exception for taxpayers who establish that they were financially disabled within the meaning of that statute. Appellant does not contend, and the evidence does not show, that he qualifies as financially disabled under R&TC section 19316.

file his 2017 return. For the second four-year statute of limitations period, appellant's 2017 return was due on April 15, 2018, and the period to timely file a claim for refund expired on April 15, 2022.² Appellant filed his claim for refund (i.e., his return) on July 5, 2022, approximately two and a half months after April 15, 2022.

With respect to the final statute of limitations period, appellant made three payments each of which will be addressed in chronological order. For the three payments, the one-year statute of limitations period expired on April 15, 2019, on December 8, 2021, and March 22, 2022, respectively. Thus, OTA finds that appellant's claim for refund filed on July 5, 2022, is barred by the statute of limitations.

HOLDING

Appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Josh Aldrich

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Josh Aldrich
Administrative Law Judge

We concur:

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John O Johnson

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John O. Johnson
Administrative Law Judge

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 6/23/2023

² Although California Code of Regulations, title 18, section 18566 states that if April 15 falls on a Saturday, Sunday, or other legal holiday, FTB will accept the return on the following day without penalty, this does not change the statutory due date stated in R&TC section 18566.