

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. ZARGARYAN

) OTA Case No. 221011598
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OPINION

Representing the Parties:

For Appellant: S. Zargaryan

For Respondent: Danielle Pegan, Graduate Legal Assistant

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Zargaryan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,606.64 for the 2017 tax year.¹

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

ISSUE

Whether the statute of limitations bars appellant’s claim for refund for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2017 tax year.
2. FTB received information that appellant paid a city business tax to the city of Los Angeles in 2017, which indicated to FTB that appellant may have a California filing requirement. Consequently, FTB issued a Request for Tax Return (Request) on two separate occasions to appellant, but appellant did not file a tax return or respond to either Request.

¹ Appellant’s 2017 California income tax return requested a refund of \$63.00. However, \$1,606.64 is the correct amount at issue, as reflected in FTB’s claim denial letter giving rise to this appeal.

3. Following appellant's nonresponse to the Requests, FTB issued a Notice of Proposed Assessment (NPA) to appellant based on the information available to FTB. Appellant did not timely respond to the NPA, and the proposed liability became final.
4. Thereafter, FTB initiated involuntary collection action. FTB collected a \$1,846.14 payment on April 8, 2021.
5. On August 29, 2022, appellant filed a 2017 tax return, reporting no taxes due and claiming a refund of \$63.²
6. FTB treated the 2017 tax return as a claim for refund and denied appellant's claim. 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 relevant 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 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).) 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.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Except in very limited situations which are not present here,³ a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Ibid.*)

² See footnote 1.

³ For instance, R&TC section 19316 provides for a narrow exception for suspending the statute of limitations 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 appellant was financially disabled at any relevant time.

Here, because appellant did not file the 2017 tax return pursuant to a valid extension of time to file, the first four-year statute of limitations under R&TC section 19306(a) does not apply. Consequently, appellant's claim for refund can only be considered timely if it was filed within four years of the date the return was originally due, or within one year from the date of overpayment.

Appellant's 2017 tax return was originally due April 15, 2018. To be timely under the second four-year statute of limitations, appellant was required to file a claim for refund for the 2017 tax year by April 15, 2022. However, appellant filed the 2017 tax return, which FTB treated as a claim for refund, on August 29, 2022. Therefore, appellant's claim for refund is time barred under the second four-year statute of limitations.

Alternatively, a refund may be allowed if the claim for refund is filed within one year from the date of overpayment. (R&TC, § 19306(a).) Having made an overpayment on April 8, 2021 (via FTB's collection action), appellant is entitled to a refund or credit only if the claim for refund was filed by April 8, 2022. However, appellant filed the claim for refund (via the 2017 tax return) on August 29, 2022, more than one year after making the overpayment. As such, appellant's claim for refund is also time barred under the one-year statute of limitations.

On appeal, appellant argues that the claim for refund was untimely because appellant was incarcerated and released sometime in 2022. Appellant also requests that the Office of Tax Appeals consider appellant's financial status. However, the language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., supra.*) Nor is there an exception that suspends the statute of limitations for claims for refund on the basis that the taxpayer was incarcerated or based upon the taxpayer's financial status.

As there is no basis to suspend the statute of limitations, appellant's claim for refund is time barred.

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2017 tax year.

DISPOSITION

FTB’s action is sustained.

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Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

Date Issued: 7/5/2023