

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. BAHNASY

) OTA Case No. 220510433
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OPINION

Representing the Parties:

For Appellant: James Creech, Representative

For Respondent: Paige Chang, Tax Counsel
Maria E. Brosterhous, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Bahnasy (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$71,274 for the 2015 taxable year.

Office of Tax Appeals Administrative Law Judges Teresa A. Stanley, Tommy Leung, and Asaf Kletter (the Panel) held an electronic oral hearing for this matter on May 19, 2023. At the conclusion of the hearing, the Panel closed the record, and this matter was submitted for an opinion.

ISSUE

Has appellant established a basis to toll the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not file a timely California 2015 tax return.
2. FTB reported receiving the following payments for appellant’s 2015 taxable year: (1) estimated payments of \$90,000 on June 15, 2015, and \$60,000 on December 29, 2015; (2) an extension payment of \$35,000 on April 14, 2016; (3) withholding credits of \$18,564; and (4) a transfer of \$79,209 from appellant’s taxable year 2014 on April 15, 2015.

3. Appellant had a tax preparer prepare her 2015 California tax return, which she signed on October 16, 2019.
4. On October 29, 2021, appellant filed the 2015 California tax return with FTB reporting total tax of \$211,499 and an overpayment of \$71,274.
5. FTB accepted appellant's return as filed and denied appellant's claim for refund of the overpayment due to the expiration of the statute of limitations.
6. 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 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.) Amounts withheld from wages and estimated tax payments are deemed paid on the original due date for the return. (R&TC, § 19002(c).)

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 appellant did not file a return within a valid extension period. The second statute of limitations

period expired on July 15, 2020,¹ more than four years after the original due date of the 2015 return on April 15, 2016. The one-year statute of limitations period also expired prior to appellant's claim for refund. Appellant's withholding credits of \$18,564 and estimated payments of \$90,000 and \$60,000 are deemed paid on April 15, 2016, the original due date of the 2015 tax return. (See R&TC, § 19002(c).) As a result, the one-year statute of limitations period expired on April 15, 2017, with respect to those credits and payments. Appellant's transfer of \$79,209 from the 2014 taxable year, on April 15, 2015, is also treated as an estimated tax payment that is deemed paid on April 15, 2016, the due date for filing the return. As such, the one-year statute of limitations period expired on April 15, 2017, for that payment. Appellant made an extension payment on April 14, 2016. This payment made prior to the due date for the return is treated as an estimated tax payment which is deemed paid on April 15, 2016. The one-year statute of limitations with respect to that final payment expired on April 15, 2017. Appellant filed a claim for refund on October 29, 2021, after the expiration of each of the preceding statute of limitations periods.

Appellant contends that pursuant to Internal Revenue Code (IRC) section 7508A, which is incorporated into California law by R&TC section 18572, the statute of limitations is tolled due to the COVID-19 pandemic. Appellant asserts that the COVID-19 pandemic constituted a disaster affecting all of California that did not end until 2023 and that IRC section 7508A should be liberally and equitably construed to provide relief from the statute of limitations. Appellant describes a series of personal tragedies that affected her ability to file her 2015 return before COVID-19 was declared a pandemic in early 2020. Although appellant's 2015 return was prepared and signed in October 2019, appellant states that she held onto the return because she is a perfectionist and wanted to make sure the return was accurate before she mailed it.

IRC section 7508A provides that when there is a federally declared disaster, time-sensitive deadlines may be postponed for a period of up to one year. For overpayments, the date for seeking a refund may be extended by up to one year as well. (IRC, § 7508A(c), Treas. Reg. § 301.7508A-1(c)(v).) R&TC section 18572(b) adopts and modifies IRC section 7508A such that it only applies to taxpayers affected by a state of emergency declared by the Governor. On March 4, 2020, Governor Newsom declared a state of emergency in California due to the threat

¹ 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>.)

of the spread of COVID-19, and on March 12, 2020, the Governor directed FTB to provide individuals and business with extensions of time to file a claim for refund, among other things. (Governor’s Exec. Order No. N-25-20 (March 12, 2020).) FTB declared that, for claims for refund expiring during the period of March 12, 2020, through July 15, 2020, the claim for refund will be considered timely if filed on or before July 15, 2020. (Cal. Franchise Tax Bd., Notice No. 2020-02 (March 30, 2020).) FTB’s Notice 2020-02 states that the authority to postpone the deadline was granted pursuant to IRC section 7508A.


Here, the four-year statute of limitations for filing a 2015 tax return fell within the time period set forth in FTB’s Notice 2020-02. Therefore, appellant’s deadline to file a claim for refund for the 2015 taxable year was postponed until July 15, 2020. Despite appellant’s personal tragedies, the statute of limitations may not be equitably extended pursuant to IRC section 7508A. The statute uses the word “may,” which gives the IRS and FTB discretion in its application. FTB used that discretion and determined that the time to perform certain acts was postponed for up to three months in 2020. The Panel is not authorized by the statute to exercise the discretion granted to FTB to further extend deadlines. Moreover, FTB’s discretion may only be used to postpone deadlines for *up to one year*. Had FTB extended the time-sensitive deadlines for the maximum time allowed by the statute, appellant’s deadline to file a claim for refund would have been April 15, 2021. Because appellant did not file the claim for refund until October 29, 2021, it was time-barred, and no reasonable cause or other equitable relief may be granted. (See *Appeal of Benemi Partners, L.P., supra.*)

HOLDING

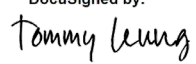
Appellant has not established a basis to toll the statute of limitations.

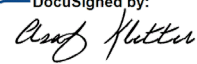
DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 8/2/2023