

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
A. ARMINIO

) OTA Case No. 221111777
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OPINION

Representing the Parties:

For Appellant: A. Arminio
For Respondent: Paige Chang, Tax Counsel

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Arminio (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,559.96 for the 2016 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 failed to timely file a 2016 California income tax return.
2. After receiving notice that appellant earned sufficient income to require appellant to file a return, respondent issued a Demand for Tax Return (Demand) on April 10, 2018, requiring appellant to respond by May 16, 2018. Because appellant did not respond to the Demand, respondent issued a Notice of Proposed Assessment (NPA) proposing tax liability of \$905.00, interest of \$53.15, a late filing penalty of \$226.25, a demand penalty

of \$226.25, and a filing enforcement fee of \$84.00. Subsequently, appellant failed to respond to several notices¹ issued by respondent.

3. Respondent received appellant's late-filed return on April 11, 2022. Appellant reported \$0.00 total tax and \$0.00 tax due on April 11, 2022. Respondent treated this return as a claim for refund, which respondent denied because it was filed outside of the statute of limitations. 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 by the extended due date; (2) four years from the due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. Due to COVID-19, respondent provided automatic extensions of time to file claims for refund until May 17, 2021, for the 2016 tax year.²

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.) 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.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Because appellant did not timely file the 2016 return, the four-year statute of limitations is determined from the due date of appellant's return, April 15, 2017. Four years from April 15, 2017, is April 15, 2021, extended by FTB to July 17, 2021. Here, appellant untimely filed his 2016 return on April 11, 2022, approximately 1 year after the expiration of the four-year

¹ Respondent also issued a Notice of State Income Tax Due on September 10, 2018, an Income Tax Due Notice on December 12, 2018, a Final Notice Before Levy and Lien on February 13, 2019, and an Order to Withhold Personal Income Tax on June 5, 2019.

² In response to the COVID-19 pandemic, FTB postponed the closing of the statute of limitations for refund claims that would have expired on April 15, 2021, such as appellant's refund claim, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.) That postponement does not affect the analysis here because appellant filed a refund claim after May 17, 2021.

statute of limitations. Thus, appellant’s claim for refund is barred under the four-year statute of limitations.

Under the one-year statute of limitations, appellant’s last payment was made on June 15, 2019, thus appellant had until June 15, 2020, to file a claim for refund under the one-year statute of limitations. Here, appellant did not file a claim for refund until April 11, 2022. Thus, appellant’s claim for refund is barred by the one-year statute of limitations as well.

Appellant asserts that respondent should grant the claim for refund because appellant tried to contact the state for four years to determine whether he had overpaid. However, appellant has not submitted proof to support his assertions and even if he had, there is no reasonable cause or equitable basis for suspending the statutory period. A taxpayer’s untimely filing of a claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P., supra.*) The statute of limitations must be strictly construed and cannot be tolled on an equitable basis or waived based on reasonable cause. (*Ibid.*) Appellant’s claim for refund is barred under R&TC section 19306(a).

HOLDING

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

DISPOSITION

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

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 8/7/2023