

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
L. LU

) OTA Case No. 22019492
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OPINION

Representing the Parties:

For Appellant: Tony Liu, CPA, Representative

For Respondent: AnaMarija Antic-Jezildzic, Specialist

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Lu (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$6,694.99 for the 2009 tax year.

Appellant waived the right to an oral hearing; therefore, OTA decides this matter based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Respondent obtained information indicating appellant had a filing requirement for the 2009 tax year.
2. After issuing a Request for Tax Return and getting no response, respondent issued a Notice of Proposed Assessment dated April 11, 2011. Respondent received no response, and the proposed assessment went final. Respondent initiated collection actions.
3. Appellant sent respondent an unsigned, typed letter dated March 31, 2020, requesting clarification about respondent’s lien on her property, stating that the intended recipient was another taxpayer who had the same name, but different social security number, and requesting more information on how to fix the mistake.

4. On August 14, 2020, respondent received a bank order payment of \$6,837.19.
5. On September 16, 2020 and again on October 12, 2020, appellant's daughter called respondent, stating appellant was not in the country due to immigration issues. Appellant's daughter also stated that the bank made the payment using her (the daughter's) money, and not appellant's funds, although it is undisputed that the withdrawn funds were in appellant's bank account. Appellant's daughter also alleged that appellant was the victim of identity theft, and should not owe any tax. Respondent advised appellant's daughter that appellant had a business license and was issued a 1099-MISC.
6. On January 26, 2021, appellant's CPA, Mr. Liu, who had a valid power of attorney form on file, sent respondent a message through the online MyFTB website stating appellant had erroneously received a 1099-MISC from a company she never worked for, and requesting more information on how to claim a refund. Respondent advised Mr. Liu to call respondent.
7. On March 1, 2021, Mr. Liu contacted respondent through the online MyFTB chat. Mr. Liu chatted with respondent's representative and asked about the process of obtaining a refund on behalf of appellant. Respondent's representative advised Mr. Liu that appellant needed to file a 2009 income tax return.
8. Appellant filed her 2009 income tax return on November 3, 2021, which reported an overpayment of \$6,694.99, which respondent processed and treated as a claim for refund.
9. Respondent denied appellant's claim for refund as being untimely and barred by the statute of limitations.

DISCUSSION

A claim for credit or refund must be filed within four years from the date the return was filed, if filed within an extension allowed by R&TC sections 18567 or 18604, within four years from the last day prescribed for filing the return without regard to any such extension, or within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law

considers such harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

Here, the one-year statute of limitations expired the latest (one year from the last date of payment was August 14, 2021). (See R&TC, § 19306(a).) It is undisputed appellant filed her income tax return on November 3, 2021, approximately two and a half months after the expiration of the statute of limitations. Thus, appellant's 2009 California income tax return was untimely as a claim for refund for the 2009 tax year.

Additionally, appellant did not file a timely, valid claim for refund in any other form, prior to the expiration of the statute of limitations. Appellant's correspondences and messages to respondent did not include a specific request for a refund. At best, appellant asked about how to claim a refund rather than claiming the refund itself. Consequently, although appellant contacted respondent numerous times about the collection of tax for the 2009 tax year, appellant never actually requested a refund until she filed her return in November 2021. The claim for refund statute states "[e]very claim for refund shall be in writing, shall be signed by the taxpayer or the taxpayer's authorized representative, and shall state the specific grounds upon which it is founded." (R&TC, § 19322.) Appellant never submitted any signed document requesting a refund until she filed her return. Thus, none of appellant's correspondences to respondent in the record constitute a valid claim for refund.

Appellant argues she is entitled to a refund because she was out of the country and did not know she had an outstanding tax liability (erroneously assessed, or not).¹ This does not constitute grounds to extend the statute of limitations; moreover, it is noteworthy appellant, appellant's daughter, and appellant's CPA had approximately one year to prepare and file her 2009 California income tax return (or file a valid claim for refund). Appellant waited until November 2021 to file her return, contrary to respondent's advice given in March 2021, before the expiration of the statute of limitations. An untimely filing bars a claim for refund "regardless

¹ There is a dispute in the record about whether respondent initiated collection actions against the wrong taxpayer; however, there is no evidence in the record showing respondent made a wrongful levy. Appellant also alleges she is the victim of identity theft, but, even if true, appellant has not provided argument or evidence that being the victim of identity theft tolls the statute of limitations.


of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected.”
(*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

HOLDING

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


DISPOSITION

Respondent’s action is sustained in full.


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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:


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Sara A. Hosey
Administrative Law Judge

DocuSigned by:


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Andrew J. Kwee
Administrative Law Judge

Date Issued: 8/30/2023