

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. WAKANA

) OTA Case No. 220510335
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OPINION

Representing the Parties:

For Appellant: J. Wakana

For Respondent: Andrea Watkins, Attorney

For Office of Tax Appeals: John Yusin, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Wakana (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund for the 2015 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 California Resident Income Tax Return (return) for the 2015 tax year.
2. Respondent obtained information indicating that appellant had received sufficient income in 2015 to prompt a return filing requirement (i.e., mortgage interest payments).
3. On October 10, 2017, respondent sent a Demand for Tax Return (Demand) to appellant, which required appellant to either file a return, provide a copy of a previously filed return, or provide information showing that she did not have a filing requirement. FTB has no record of appellant’s response to its Demand.

4. On December 13, 2017, respondent issued a Notice of Proposed Assessment (NPA) using the income information it had obtained to estimate appellant's income and proposed tax, plus interest. Respondent explained that appellant needed to file a return or protest, or the NPA would become due and payable on February 12, 2018. Appellant did not respond.
5. On March 12, 2018, respondent sent a Notice of State Income Tax Due showing a balance of \$11,257.30 and explaining that collection activity could occur if left unpaid.
6. On April 27, 2018, respondent sent an Income Tax Due Notice.
7. On June 4, 2018, respondent sent a Final Notice Before Levy and Lien.
8. Respondent began collection action and recovered payments of \$11,813.13 on October 9, 2018, and of \$2,039.73 and \$22.53 on October 30, 2018.
9. On June 15, 2021, appellant filed a return for the 2015 tax year reporting zero income.¹
10. Respondent treated the return as a claim for refund. On February 2, 2022, respondent sent a letter to appellant explaining that the statute of limitations had expired before appellant filed her return. Therefore, respondent could not allow a credit or refund of appellant's \$13,558.39 overpayment. Respondent denied appellant's claim for refund.
11. This timely appeal followed.
12. On May 25, 2023, OTA sent the parties additional briefing (AB) request.
13. By letter dated June 22, 2023, FTB responded to OTA's AB request. FTB conceded that appellant is entitled to the return of \$2,039.73, without interest, that it overcollected from appellant in 2018.² Appellant did not respond to the AB request.

DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law, for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund

¹ The return is dated June 11, 2021, and respondent's records indicate that respondent received it on June 15, 2021.

² See respondent's Technical Advice Memorandum (TAM) 2007-01, which is available at <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2007-01.pdf>.

should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(b).)

R&TC section 19306(a) provides that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) If a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Cornbleth, supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

In this appeal, appellant's return was due on April 15, 2016. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file a return within the extended filing period. The second four-year statute of limitations period to file a claim for refund expired on April 15, 2020. In response to COVID-19, however, respondent postponed the due dates for individuals to file a refund claim to July 15, 2020.³ Appellant's return, which was treated as a claim for refund, was not filed until June 15, 2021, and is, therefore, untimely under the second four-year statute of limitations period.

With respect to the final period described in R&TC section 19306(a), the most recent payment on appellant's account was made on October 30, 2018, and appellant's claim for refund is, therefore, barred by the one-year statute of limitations period that expired on October 30, 2019.

Appellant argues the statute of limitations for claims for refund does not apply because appellant had no income in 2015 and never owed the tax liability. However, a taxpayer's failure,

³ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; FTB Notice 2020-02.


for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Benemi Partners, L.P., supra; Appeal of Khan, 2020-OTA-126P.*) Appellant, therefore, is time-barred from recovering a refund.

HOLDING


Appellant’s claim for refund is barred by the statute of limitations except as to the \$2,039.73 that was overcollected.


DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained except as to the \$2,039.73 that was conceded.

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Josh Aldrich
Administrative Law Judge

We concur:

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Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 9/21/2023