

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. FLYNN

) OTA Case No. 220710845
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OPINION

Representing the Parties:

For Appellant: S. Flynn

For Respondent: Noel Garcia-Rosenblum, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, S. Flynn (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$898.01 and \$2,130,54.00 for tax years 2014 and 2015, respectively.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single Administrative Law Judge. (Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Amanda Vassigh held an oral hearing for this matter electronically, on June 15, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether the statute of limitations bars appellant’s claims for refund for the 2014 or 2015 tax year.¹

¹ The issue statement was agreed on by the parties at the prehearing conference held for this appeal. At the hearing, appellant clarified that her request was to be refunded the amounts that FTB had garnished. Since the garnished amounts are included in the claims for refund, the issue in this case remains whether the statute of limitations bars appellant’s claims for refunds.

FACTUAL FINDINGSTax Year 2014

1. FTB received information that appellant received income during the 2014 tax year that resulted in a California tax return filing requirement.
2. Appellant had no tax return on file for that year. As such, FTB issued a Request for Tax Return (Request) to appellant dated June 28, 2016, requesting that appellant file a tax return for the 2014 tax year or provide a completed Form 4600G ENS, Reply to FTB – Questionnaire, showing that appellant had no filing requirement for the 2014 tax year, by August 3, 2016.
3. When appellant did not respond to the Request, FTB sent appellant a Notice of Proposed Assessment (NPA) dated September 19, 2016, proposing tax based on an estimate of appellant's income and imposing a late-filing penalty, plus interest.
4. On August 7, 2019, and August 12, 2019, FTB engaged in collection action that resulted in payments of \$665.78 and \$48.23, respectively, for the 2014 tax year.²
5. Appellant filed her 2014 California tax return on March 1, 2022, which resulted in an overpayment of \$898.01 on appellant's 2014 tax year account.

Tax Year 2015

6. FTB received information that appellant received income during the 2015 tax year that resulted in a California tax return filing requirement.
7. Appellant had no tax return on file for that year. As such, FTB issued a Demand for Tax Return (Demand) to appellant dated April 19, 2017, requiring that appellant file a tax return for the 2015 tax year, provide evidence that a tax return had already been filed, or explain why appellant had no filing requirement for the 2015 tax year, by May 24, 2017.
8. When appellant did not respond to the Demand, FTB sent appellant an NPA dated June 19, 2017, proposing tax and imposing a demand penalty, a late-filing penalty, and a filing enforcement fee, plus interest.

² Appellant also had withholdings in the amount of \$517 for the 2014 tax year.

9. FTB engaged in collection action, resulting in payments of \$617.55 and \$321.78 on August 12, 2019, and September 3, 2019, respectively, for the 2015 tax year.³ Appellant filed her 2015 California tax return on March 14, 2022, which resulted in an overpayment of \$2,130.54 on appellant's 2015 tax year account, after FTB removed the late-filing penalty and reduced the demand penalty.

Denial of Claims for Refund and Appeal

10. FTB treated appellant's 2014 and 2015 California tax returns as claims for refund and denied appellant's claims for refund for both tax years on the basis that the statute of limitations for the claims for refund had expired.
11. Appellant then filed this timely appeal.

DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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 R&TC section 18567 or 18604 (whichever is applicable); (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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602; *Appeal of Benemi Partners, L.P., supra.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the

³ Appellant also had withholdings in the amount of \$1,376 for the 2015 tax year.

clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84, 100-101 and *U.S. v. Boyle* (1985) 469 U.S. 241, 249.)

Since appellant did not file timely returns, the applicable claim for refund statute of limitations in this appeal is the later of four years from the last day prescribed for filing the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2014 tax year, the four-year statute of limitations period expired on April 15, 2019 (four years from the due date of April 15, 2015). Appellant did not file a claim for refund until March 1, 2022. Appellant's claim for refund for the 2014 tax year is therefore barred under the four-year statute of limitations period. For the 2015 tax year, the four-year statute of limitations period expired on July 15, 2020 (four years from the due date of April 15, 2016, plus time provided under the COVID-19 State of Emergency postponement).⁴ Appellant did not file a claim for refund until March 14, 2022. Appellant's claim for refund for the 2015 tax year is therefore barred under the four-year statute of limitations period.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Appellant's last payment for the 2014 tax year was made on August 12, 2019. Since appellant filed her claim for refund for the 2014 tax year on March 1, 2022, her claim for refund is barred under the one-year statute of limitations. In regard to the 2015 tax year, appellant's last payment was made on September 3, 2019. Since appellant filed her claim for refund for the 2015 tax year on March 14, 2022, her claim for refund is barred under the one-year statute of limitations.

In this appeal, appellant does not argue that she filed her California tax returns within the prescribed time periods set forth in R&TC section 19306. Rather, appellant contends that the amounts that were garnished through FTB's collection actions should be refunded to her. During the hearing, appellant testified that she spoke to an FTB employee who did not tell her that she had a specific timeframe within which she needed to file her returns to receive refunds of overpayments. Appellant also testified that she was told the garnished amounts would be refunded if she filed her returns. Appellant did not present evidence of this conversation, but even if she had, FTB is an administrative agency, and it does not have the legal authority to

⁴ R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone certain tax-related deadlines. When the applicable statute of limitations to file a timely claim for refund expired during the period of March 12, 2020, through July 15, 2020, FTB will consider the claim timely if filed on or before July 15, 2020. (FTB Notice 2020-02 (March 30, 2020), available at <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.)

interpret a statute in such a way as to change its meaning or effect. (*Appeal of Collamore* (72-SBE-031) 1972 WL 2664.)

OTA can only grant relief where the law specifically allows. (See *Appeal of Xie*, 2018-OTA-076P.) The language of the statute of limitations must be strictly construed, and the law does not provide a reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) As explained above, this is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm, supra.*)

Without timely refund claims, appellant’s claims for refunds are barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant’s claims for refund for the 2014 and 2015 tax years.

DISPOSITION

FTB’s action denying appellant’s claims for refund for the 2014 and the 2015 tax years are sustained.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 9/14/2023