

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
V. JIMENEZ

) OTA Case No. 220811085
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OPINION

Representing the Parties:

For Appellant: V. Jimenez

For Respondent: Josh Ricafort, Attorney

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Jimenez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,430 for the 2014 tax year.

Appellant waived the right to an oral hearing, so the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether the statute of limitations bars appellant’s claim for refund of \$5,430 for the 2014 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return (return) for the 2014 tax year by either the due date of April 15, 2015, or the six-month extension deadline of October 15, 2015.
2. On May 25, 2017, FTB requested that appellant file a 2014 return, prove that she already filed her 2014 return, or explain why she did not have a filing requirement. Appellant did not respond.
3. On July 24, 2017, FTB issued to appellant a Notice of Proposed Assessment (NPA) for the 2014 tax year, which estimated appellant’s taxable income and proposed tax, penalty,

- and interest. Appellant did not protest or otherwise respond to the NPA, which FTB subsequently affirmed.
4. Thereafter, FTB initiated involuntary collection action against appellant. From May 21, 2018, through June 9, 2022, FTB collected total payments of \$7,653.42, which fully satisfied appellant's liability for the 2014 tax year.¹
 5. On July 11, 2022, appellant filed her 2014 return, which reported taxable income of \$6,911 and no tax due.
 6. FTB accepted appellant's 2014 return and treated it as a claim for refund of \$7,653.42.
 7. FTB issued to appellant a refund of \$2,223.42, which corresponded to payments collected from August 6, 2021, through June 9, 2022.
 8. FTB denied appellant's claim for refund with respect to total payments of \$5,430, which FTB collected from May 21, 2018, through May 13, 2021, because FTB determined that the applicable statute of limitations had expired.
 9. 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 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. 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.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

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. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date. (*Ibid.*) Although the result of fixed deadlines may appear

¹ From May 21, 2018, through May 13, 2021, FTB collected from appellant payments totaling \$5,430.00. From August 6, 2021, through June 9, 2022, FTB collected from appellant payments totaling \$2,223.42.

harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*)

On appeal, appellant asserts that FTB did not inform her of the statute of limitations until it sent a notice dated August 1, 2022; on that basis, appellant argues that she should not be penalized but should receive an additional refund of \$5,430.

Here, appellant filed her claim for refund on July 11, 2022. Because appellant did not timely file her claim within the extension ending on October 15, 2015, the first four-year statute of limitations described in R&TC section 19306(a) is inapplicable. The second four-year statute of limitations described therein ended on April 15, 2019 (i.e., four years from the 2014 return's due date regardless of any extension), so appellant's July 11, 2022 claim for refund was not timely filed within the second four-year statute of limitations. Regarding the one-year statute of limitations, it only allows the refund of payments made within one year of appellant's July 11, 2022 claim for refund (i.e., payments made after July 11, 2021). However, the overpayments at issue are a series of payments totaling \$5,430, collected by FTB between May 21, 2018, and May 13, 2021 (i.e., before July 11, 2021); accordingly, under the one-year statute of limitations, appellant's claim for refund is not timely with respect to these payments. For these reasons, appellant's claim for refund of \$5,430 is not timely under any of the statutes of limitations described in R&TC section 19306(a).

Regarding appellant's argument that FTB did not inform her of the statute of limitations until after it had already expired, OTA notes that this is an argument for reasonable cause and equity. However, there is no reasonable cause or equitable basis for suspending the statute of limitations under California law. (*Appeal of Benemi Partners, L.P., supra.*)² Further, FTB is not obligated to inform a taxpayer of the time within which a claim for refund must be filed. (See *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Accordingly, OTA is not persuaded by appellant's argument for granting her an additional refund of \$5,430.

² Statutory exceptions to the statute of limitations exist, such as R&TC section 19316, which tolls the statute of limitations during a period when a taxpayer establishes a financial disability. However, appellant has not asserted, and the record contains no evidence, that any statutory exception applies here.

HOLDING

The statute of limitations bars appellant’s claim for refund of \$5,430 for the 2014 tax year.

DISPOSITION

FTB’s action denying appellant’s claim for refund of \$5,430 is sustained.

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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

Date Issued: 9/18/2023