

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**L. LEDIAEV**

) OTA Case No. 220911400  
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**OPINION**

Representing the Parties:

For Appellant: L. Lediaev

For Respondent: Eric R. Brown, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Lediaev (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$7,890.02 for the 2010 tax year.

Appellant waived the right to an oral hearing; therefore, this panel 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. Appellant did not file a timely 2010 California income tax return.
2. Respondent received information that appellant had income in 2010 from the sale of real property, wages from One Lambda, Inc., interest income from Lockheed Federal Credit Union, and miscellaneous income from Lovetoknow. Based on this information, respondent issued a Demand for Tax Return (Demand) on May 8, 2013.
3. When appellant did not timely respond to the Demand, respondent issued a Notice of Proposed Assessment (NPA) using the income information it had received.
4. Appellant did not respond to the NPA, and the NPA went final.

5. Respondent initiated collection action. From May 8, 2014, through August 1, 2019, respondent received payments totaling \$7,890.02 of tax, interest and penalties.<sup>1</sup> From May 12, 2021, through July 15, 2022, respondent received \$4,457.80 to satisfy appellant's remaining balance.
6. Appellant filed an untimely 2010 California income tax return on February 28, 2022, which respondent treated as a claim for refund. Appellant reported no tax due.
7. Respondent denied appellant's claim for refund of \$7,890.02 because the statute of limitations had expired, and granted the refund for the \$4,457.80 appellant paid in 2021 and 2022.
8. This timely appeal followed.

### DISCUSSION

A claim for credit or refund of an overpayment must be filed within four years from the date the return was filed, if the return was 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 later. (R&TC, § 19306(a).) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) 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.)

Since appellant did not file a timely 2010 California income tax return, the four-year statute of limitations to claim a refund for appellant's 2010 tax year expired on April 15, 2015, nearly seven years before appellant filed the claim for refund. Thus, the only available statute of limitations here is the one-year statute of limitations that expires within one year of the date of the overpayment. It is undisputed respondent received the \$7,890.02 overpayments at issue in this appeal between May 8, 2014, and August 1, 2019. The one-year statute of limitations for the

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<sup>1</sup> Respondent also received \$170.00 for the cost collection fee, which is not at issue in this appeal.

last overpayment expired on August 1, 2020, and appellant filed a claim for refund on February 28, 2022, nearly a year and a half after the statute of limitations expired.

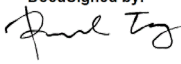
In appellant’s Request for Appeal, appellant requests that respondent apply the \$7,890.02 overpayment to “my California tax debt.” A taxpayer’s failure to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Benemi Partners, L.P., supra; Appeal of Khan, supra.*) Thus, appellant’s request for the refund to be applied as such is barred by the statute of limitations for the reasons set forth above, and OTA finds no applicable recourse to refund or credit taxes paid since appellant’s claim for refund was untimely.

HOLDING

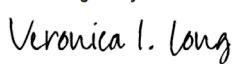
Appellant’s claim for refund is barred by the statute of limitations.

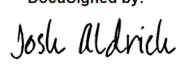
DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Veronica I. Long  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 9/19/2023