

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. LOWE

) OTA Case No. 220911513
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OPINION

Representing the Parties:

For Appellant: E. Lowe

For Respondent: Joel M. Smith, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Lowe (appellant) appeals actions by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$12,787 for the 2016 tax year and \$2,726 for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant filed timely claims for refund of \$12,787 for the 2016 tax year and \$2,726 for the 2017 tax year.

FACTUAL FINDINGS

1. Respondent determined that appellant held an active professional/business license with The State Bar of California in 2016 and 2017 but had not filed a tax return for either tax year. Respondent issued appellant a separate Demand for Tax Return (Demand) for each tax year, which required appellant to respond by either filing a 2016 or 2017 tax return, providing a copy of the return as evidence that it had already been filed, or providing information on why appellant was not required to file the return. Respondent did not receive a response to either Demand.

2. Respondent issued a Notice of Proposed Assessment (NPA) for the 2016 tax year and estimated appellant's income based on the average income amount reported by individuals in appellant's industry. When the assessment went final and remained unpaid, respondent commenced collection action. Appellant entered into an installment agreement and made monthly payments totaling \$1,045.00 from March 2019 through July 2019. Additionally, respondent transferred \$11,776.77 from appellant's 2015 tax year to appellant's 2016 tax account on August 15, 2019.
3. Respondent also issued an NPA for the 2017 tax year and assessed tax based on an estimate of appellant's income. When the assessment went final and remained unpaid, respondent commenced collection action. Appellant entered into an installment agreement and made monthly payments totaling \$2,760 from September 4, 2020, to June 4, 2021, and monthly payments totaling \$3,360 from July 6, 2021, to February 4, 2022.
4. On June 9, 2022, appellant filed the 2016 and 2017 California tax returns. The 2016 return reported total tax of \$0 and income tax withholdings of \$0. The 2017 return reported total tax of \$0 and income tax withholdings of \$0.
5. Respondent accepted the returns as filed and treated them as claims for refund. For the 2016 tax year, respondent recalculated appellant's overpayment to be \$12,787.77¹ but did not issue a refund, stating that the claim for refund was not timely filed under the statute of limitations. For the 2017 tax year, respondent recalculated appellant's overpayment to be \$6,124.16.² Respondent considered the refund timely for the amount of \$3,364.16³ and transferred it to appellant's 2018 tax year account. After deducting the installment agreement fee of \$34.00, respondent did not refund the remaining \$2,726.00, stating that the claim for refund was not timely filed under the statute of limitations.
6. This timely appeal followed.

¹ Total payments (\$1,045.00 + 11,776.77) less installment agreement fee (\$34.00).

² Total payments (\$2,760.00 + \$3,360.00) plus interest (\$4.16).

³ Appellant's payments from July 6, 2021, to February 4, 2022, (\$3,360) plus interest (\$4.16).

DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance will be refunded to the taxpayer. (R&TC, § 19301(a).) However, no credit or refund is 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 filed within the extended due date; (2) four years from the due date 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. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Here, appellant filed the 2016 and 2017 tax returns on June 9, 2022. Therefore, the first four-year statute of limitations is inapplicable because neither return was filed within the applicable extended due date. To claim a timely refund under the second four-year statute of limitations, appellant had to file the returns four years from the original due date of the returns, which was April 15, 2021 (but postponed to May 17, 2021⁴) and April 15, 2022, for the 2016 and 2017 tax years, respectively. Appellant did not file either return within the second four-year deadline. Under the one-year statute of limitations, appellant must have filed a 2016 refund claim no later than August 15, 2020 (i.e., one year from when the 2015 overpayment was applied to the 2016 account) to receive any refund for that tax year. For the 2017 tax year, appellant must have filed a 2017 refund claim no later than June 4, 2022 (i.e., one year from appellant's last installment payment) to receive an additional refund of \$2,726 for that tax year. Appellant's returns also fall outside the one-year statute of limitations for both years. Accordingly, appellant's claims for refund are barred by the statute of limitations.

Appellant does not argue that she filed the 2016 and 2017 California tax returns within the prescribed time periods as set forth in R&TC section 19306(a). Rather, appellant's argument is equitable in nature. Appellant states that she fell behind on filing her returns after several

⁴ Following the IRS, respondent postponed the four-year statute of limitations for claiming a refund from April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; Franchise Tax Board, *State Postpones Deadline for Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.) Appellant's 2016 return was also filed after the May 17, 2021 deadline.

illnesses. Appellant contends that in 2018, she took out a loan on her house to pay taxes in excess of \$25,000. Appellant contends that respondent assured her that any excess taxes would be paid back to her if she filed her 2019 tax return. However, appellant contends that she discovered that refunds from the 2014 and 2015 tax years were applied to the 2016 and 2017 tax years and are now time barred by the statute of limitations.

Although the Office of Tax Appeals is sympathetic to appellant's situation, it 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 there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) In addition, respondent is entitled under the law to apply any overpayment to another tax year as a credit pursuant to R&TC section 19301(a).

Regarding appellant's contention that she relied on respondent's assertions, appellant has not provided any evidence to support it. In addition, respondent's representatives are not authoritative sources of law. (See *Appeal of Sedillo*, 2018-OTA-101P.) Respondent is an administrative agency, and it does not have the legal authority to interpret a statute in such a way as to change its meaning or effect. (*Appeal of Collamore* (72-SBE-031) 1972 WL 2664.) For the reasons described above, appellant's claims for refund are barred under the statute of limitations described in R&TC section 19306(a).

HOLDING

Appellant did not file timely claims for refund of \$12,787 for the 2016 tax year and \$2,726 for the 2017 tax year.

DISPOSITION

Respondent’s actions in denying appellant’s claims for refund are sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 9/26/2023