

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. HOANG AND) OTA Case No. 221111785
N. GREENBERG)
_____)

OPINION

Representing the Parties:

For Appellants: D. Hoang
For Respondent: Maria Brosterhous, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Hoang and N. Greenberg (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,268.54¹ for the 2017 tax year.

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

ISSUE

Whether appellants’ claim for refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants did not file a timely 2017 California income tax return.
2. FTB received information that appellants had income taxable by California in 2017, and based on that information, FTB issued a proposed assessment that went final. FTB

¹ Appellants’ opening brief identifies the amount in dispute as \$6,284.00, which is also the amount on appellants’ claim for refund. FTB denied appellants’ claim for refund in the amount of \$4,109.00 and issued a refund/credit for \$2,015.44. The record does not explain the discrepancy, however for purposes of this appeal, the difference will be deemed denied. Thus, the amount in dispute is the amount claimed less the amount FTB already refunded, which is \$4,268.54.

- initiated collection action and received payments of \$30.00 a month between June and November 2021. On June 23, 2022, FTB also received a payment of \$1,104.51, and on July 8, 2022, FTB received payment in the amount of \$840.51.
3. Appellants filed their 2017 tax return on September 13, 2022, and reported an overpayment of \$6,284.00.
 4. FTB processed appellants' return and treated it as a claim for refund. On October 13, 2022, FTB applied a credit of \$2,015.44 to appellants' outstanding tax liability for the 2019 tax year.
 5. FTB denied the remainder of appellants' claim for refund based on the expiration of the statute of limitations.
 6. This timely appeal follows.

DISCUSSION

A claim for credit or refund must be filed within four years from the date the return was filed, if 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 period expires last. (R&TC, § 19306(a).) 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. (See *Appeal of Khan*, 2020-OTA-126P.)

Here, it is undisputed the four-year statute of limitations expired prior to appellants' claim for refund filing. Thus, the applicable statute of limitations here is the one-year statute of limitations, which expired one year from the date of any overpayment. (See R&TC, § 19306(a).) Since FTB received appellants' claim for refund on September 13, 2022, a refund is not allowable for payments made prior to September 13, 2021.

The record shows FTB issued a credit/refund for all of appellants' payments made within one year of September 13, 2021 (i.e., the date appellants filed their claim for refund). However, appellants requested a refund for payments they made prior to September 13, 2021, which includes withholding payments. Such refunds are not allowable under the law. (See R&TC, § 19306(a); *Appeal of Khan*, *supra*.)

Appellants argue Mr. Hoang was ill and quarantined for COVID-19, which prevented him from timely filing appellants' 2017 return. R&TC section 19316 provides a narrow exception for suspending the statute of limitations for refund or credit claims where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. However, appellants provide insufficient evidence to allow a tolling of the statute of limitations under that exception. OTA sees no other grounds in the record to extend the statute of limitations. Thus, appellants' claim for refund was untimely and an untimely filing bars a claim for refund "regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected." (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

HOLDING

Appellants' claim for refund for the 2017 tax year is barred by the statute of limitations.

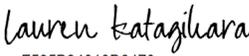
DISPOSITION

FTB's action is sustained.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Lauren Katagihara
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 9/25/2023