

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
X. FENG

) OTA Case No. 221111973
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OPINION

Representing the Parties:

For Appellant: X. Feng

For Respondent: Nancy E. Parker, Attorney

For Office of Tax Appeals: Rachel Lucchini,
Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, X. Feng (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,997 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’s claim for refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely tax return for the 2017 year.
2. Appellant obtained a Certificate of Mailing postmarked on November 30, 2020, showing that appellant deposited mail with the United States Postal Service (USPS). As relevant here, the Certificate of Mailing shows that the mail was addressed for delivery as follows:

Franchise Tax Board
P.O. Box 242840
Sacramento, CA 94240-001

3. The correct address for filing a return that claims a refund with respondent is:
Franchise Tax Board
P.O. Box 942840
Sacramento, CA 94240-001¹
4. Thereafter, respondent received appellant's 2017 California Nonresident or Part-Year Resident Income Tax Return on August 1, 2022 via FedEx. On the return, appellant reported tax of \$12,812 and claimed withholding credits of \$15,809, which resulted in an overpayment of \$2,997.
5. Respondent processed the return as filed but denied appellant's claim for refund due to the expiration of the statute of limitations.
6. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within four years from the date of the original tax return, or four years from the date the return was filed if it was filed by the automatic extended due date, or one year from the date of the overpayment, whichever is later. The taxpayer has the burden of proving a timely claim and their entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [there is no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie, supra.*) It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

¹ This address is included on the return that appellant filed. See also <https://www.ftb.ca.gov/help/contact/mailing-addresses.html#Tax-returns>.

If a taxpayer places a return or claim for credit or refund required by law to be filed with the state or state agency on or before a specified date is filed with a state agency through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the cancellation mark stamped on the envelope. (Gov. Code, § 11003; R&TC, § 21027.) Taxpayers attempting to prove that a paper return was timely mailed would have to show evidence, such as a registered or certified mail receipt, that the return was timely mailed. (*Appeal of Fisher*, 2022-OTA-337P; Cal. Code Regs., tit. 18, § 30219(a).) Here, appellant obtained a postmarked Certificate of Mailing, which indicates that appellant presented mail to USPS on November 30, 2020. Thus, there is some evidence that appellant attempted to file a claim for refund within the statute of limitations period. However, the Certificate of Mailing is improperly addressed. As a result of the incorrect address, OTA cannot conclude that a claim for refund was timely filed based on the Certificate of Mailing.

Appellant failed to file a 2017 tax return by the due date of April 15, 2018, or within the automatic extension period. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later, on April 15, 2022. (R&TC, § 19306(a).) Appellant filed the claim for refund on August 1, 2022. Thus, under R&TC section 19306, the four-year statute of limitation expired prior to appellant filing the claim for refund.

The alternative one-year statute of limitation applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Appellant's payment of \$15,809 was made via withholding. Payments made via withholding are deemed paid as of the original due date of the return. (R&TC, § 19002.) Here, the original due date of the return was April 15, 2018, and appellant filed the claim for refund more than one year later on August 1, 2022. Therefore, the claim for refund is barred under the one-year statute of limitations period.

A taxpayer's failure to file a claim for refund by the applicable due date, for whatever reason, bars them from a later claim. (*Appeal of Estate of Gillespie, supra.*) The language of the statute of limitations must be strictly construed, and there is no reasonable cause basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., supra.*) Accordingly,

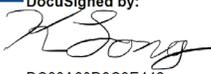
because appellant did not file a timely refund claim under either the four-year or one-year statute of limitations for 2017, appellant is barred from seeking a refund.

HOLDING

Appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

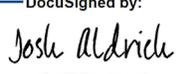
DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

DocuSigned by:

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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

48745BB806914B4

Josh Aldrich
Administrative Law Judge

DocuSigned by:

F8E81582726F448.

Richard Tay
Administrative Law Judge

Date Issued: 9/20/2023