

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230112488
J. NUNO AND)
P. MARTINEZ)
_____)

OPINION

Representing the Parties:

For Appellants: J. Nuno and P. Martinez

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Angie Ye, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Nuno and P. Martinez (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$504 for the 2015 tax year, \$448 for the 2016 tax year, and \$412 for the 2017 tax year.

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

ISSUE

Whether appellants’ claims for refund for the 2015 through 2017 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. On June 9, 2016, appellants timely filed their joint 2015 California tax return. Appellants reported an overpayment of \$2,783, which FTB refunded on June 10, 2016.
2. On April 7, 2017, appellants timely filed their joint 2016 California tax return. Appellants reported an overpayment of \$2,117, which FTB refunded on April 10, 2017.
3. On March 17, 2018, appellants timely filed their join 2017 California tax return. Appellants reported an overpayment of \$2,022, which FTB refunded on March 19, 2018.

4. On October 10, 2022, FTB received appellants' joint California 2015, 2016, and 2017 amended tax returns. On the amended returns, appellants reported overpayments of \$3,287 in 2015; \$2,565 in 2016; and \$2,434 in 2017. In the Explanation of Changes section of the amended returns, appellants stated that their original tax returns had been done incorrectly by their tax preparer.
5. According to the amended returns, appellants would have remaining overpayments of \$504 in their 2015 tax year account, \$448 in their 2016 tax year account, and \$412 in their 2017 tax year account.
6. FTB processed appellants' 2015, 2016, and 2017 amended returns and accepted the reported taxes. However, FTB denied appellants' claims for refund because they were barred by the statute of limitations.
7. This timely appeal followed.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations 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. (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.) There is also no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The taxpayer has the burden of proof to show entitlement to a refund and that the claim was timely filed. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

2015 Tax Year

Appellants originally filed their joint California 2015 tax return on June 9, 2016. Appellants filed their amended joint 2015 California tax return, which was treated as a refund claim, on October 10, 2022. The first statute of limitations period expired four years from when the original 2015 tax return was filed, as it was filed within the automatic extended due date. Since appellants filed the original 2015 tax return by October 15, 2016, the automatic extended due date, the first statute of limitations period expired on June 9, 2020. The second statute of

limitations period expired four years from the due date for filing the 2015 tax return. The due date for the 2015 tax return was April 15, 2016, so the second statute of limitations period expired April 15, 2020. Lastly, the third statute of limitations period expired one year from the date of overpayment on the 2015 tax return. The only overpayment on the 2015 tax return was the claimed withholding credit and, according to R&TC section 19002(c)(1), withholding credits are deemed paid on the original return filing due date. Thus, the third statute of limitations period expired one year from the date of overpayment, on April 15, 2017. Appellants' claim for refund for the 2015 tax year was filed on October 10, 2022, which is well beyond the one-year and four-year statute of limitations periods prescribed in R&TC section 19306. Hence, appellants' 2015 claim for refund is barred.

2016 Tax Year

Appellants originally filed their joint 2016 California tax return on April 7, 2017. Appellants filed their amended joint 2016 California tax return, which was treated as a refund claim, on October 10, 2022. The first statute of limitations period is inapplicable because the original tax return was not filed pursuant to an extension of time to file. The second statute of limitations period expired four years from the due date for filing the 2016 tax return. The due date for the 2016 tax return was April 15, 2017; however, due to COVID-19, FTB postponed the deadline for claiming 2016 tax refunds to May 17, 2021.¹ Lastly, the third statute of limitations period expired one year from the date of overpayment on the 2016 tax return. Like the 2015 tax return, the only overpayment on the 2016 tax return was the claimed withholding credit. Thus, the third statute of limitations period expired one year from the date of overpayment, on April 15, 2018. Appellants' claim for refund for the 2016 tax year, which was filed on October 10, 2022, is beyond the one-year and four-year statute of limitations periods described in R&TC section 19306. Hence, appellants' 2016 claim for refund is barred.

¹ For the 2016 tax year, the statute of limitations generally would have expired on April 15, 2021. However, due to the COVID-19 pandemic, FTB treated refund claims filed by May 17, 2021, as timely. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-taxrefunds-to-may-17-2021.html>.)

2017 Tax Year

Appellants originally filed their joint 2017 California tax return on March 17, 2018. Appellants filed their amended joint 2017 California tax return, which was treated as a refund claim, on October 10, 2022. The first statute of limitations period is inapplicable because the original tax return was not filed pursuant to an extension of time to file. The second statute of limitations period expired four years from the due date for filing the 2017 tax return. The due date for the 2017 tax return was April 15, 2018, so the second statute of limitations period expired April 15, 2022. Lastly, the third statute of limitations period expired one year from the date of overpayment on the 2017 tax return. Similarly, for the 2017 tax year, the only payment on the account was the withholding credit. Therefore, the third statute of limitations period expired one year from the date of overpayment, on April 15, 2019. Since appellants filed their claim for refund for the 2017 tax year on October 10, 2022, the claim is barred as it is beyond the one-year and four-year statute of limitations periods prescribed in R&TC section 19306.

Appellants contend that their claims for refund should not be barred by the statute of limitations because their tax preparer filed the tax returns incorrectly. However, a taxpayer's failure to file a claim for refund within the statutory period, for any reason, bars the taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie, supra.*) It is the taxpayer's responsibility to file a claim for refund within the time frame prescribed by law. (*Ibid.*) Although there are some statutory exceptions, appellants have not asserted or shown evidence that they apply in this appeal. (See R&TC, § 19316.)

HOLDING

Appellants’ claims for refund for the 2015 through 2017 tax years are barred by the statute of limitations.

DISPOSITION

FTB’s actions denying appellants’ claims for refund are sustained.

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Veronica I. Long
32D46B0C48C949F...
Veronica I. Long
Administrative Law Judge

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...
Kenneth Gast
Administrative Law Judge

Date Issued: 9/25/2023