

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
W. BASSETT

) OTA Case No. 230212535
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OPINION

Representing the Parties:

For Appellant: W. Bassett

For Respondent: Alisa L. Pinarbasi, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Bassett (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,665 for the 2017 tax year.¹

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

ISSUE

Whether the statute of limitations bars appellant’s claim for a refund for the 2017 tax year.

FACTUAL FINDINGS

1. Through FTB’s Integrated Non-Filer Compliance (INC) program, FTB received information indicating that appellant received various sources of income during the 2017 tax year. However, FTB’s records indicated that appellant had not filed a California Resident Income Tax Return (California tax return) for the 2017 tax year. Therefore, FTB issued appellant a Request for Tax Return (Request) for the 2017 tax year.

¹ FTB refunded appellant in the amount of \$1,295.82, but partially disallowed \$1,665.00. Therefore, the Office of Tax Appeals determines that the correct dollar amount at issue is \$1,665.00, not \$2,960.82.

2. The Request required appellant to file a 2017 tax return, provide evidence that a 2017 tax return was already filed, or provide information that he did not have a 2017 filing requirement. However, appellant did not respond to the Request.
3. FTB issued a Notice of Proposed Assessment (NPA) for the 2017 tax year. FTB estimated appellant's taxable income based on the information it received from the INC program. The NPA proposed a tax liability of \$665.00, a late filing penalty of \$166.25, and applicable interest.
4. Appellant did not protest the NPA; therefore, the NPA became final.
5. FTB did not receive payments from appellant for the 2017 tax year; therefore, FTB issued an Order to Withhold to appellant's bank.² On December 13, 2021, a payment of \$1,289.30 was applied to appellant's account to satisfy the outstanding balance.
6. On December 9, 2022, appellant untimely filed a 2017 California tax return. FTB processed appellant's untimely 2017 California tax return and treated it as a claim for refund.
7. As relevant to this appeal, FTB's records indicate that appellant's account reflects tax withholding credits of \$2,304.00, the December 13, 2021 payment of \$1,289.30, and write-off amounts of \$2.34 and \$4.18. After applying the reported tax due of \$323.00 and a nonrefundable filing enforcement cost recovery fee of \$316.00, FTB determined that the total reported overpayment on appellant's account is \$2,960.82.³ However, FTB partially denied appellant's claim for a refund in the amount of \$1,665.00 because of the statute of limitations.⁴
8. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) 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

² The Order to Withhold also included amounts for the 2016 tax year that is not relevant for purposes of this appeal.

³ \$2,960.82 overpayment = [\$2,304.00 tax withholding + \$2.34 write-off amount + \$4.18 write-off amounts + \$1,289.30 December 13, 2021 payment] – [\$323.00 reported tax due + \$316.00 collection cost recovery fee].

⁴ \$1,665.00 denial of overpayment = [\$2,304.00 tax withholding] – [\$323.00 reported tax due + \$316.00 filing enforcement cost recovery fee]. FTB refunded appellant the December 13, 2021 payment of \$1,289.30, write-off of \$4.18, and allowed interest of \$2.34 to appellant, totaling \$1,295.82.

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 taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant's claim for a refund on his 2017 California tax return was untimely filed on December 9, 2022. The first four-year statute of limitations period is inapplicable because appellant's return was filed after the extension of time to file. Appellant also does not meet the second four-year statute of limitations period because he did not file his return until after the deadline to file a claim for refund, which originally expired on April 15, 2022.

Lastly, the one-year statute of limitations period described in R&TC section 19306(a) is one year from the date of overpayment. Here, the latest payment of \$1,289.30 was made on December 13, 2021, and the statute of limitation expired on December 13, 2022, which is one year after the date of the payment. Since appellant's claim for a refund was filed on December 9, 2022, FTB properly determined that the December 13, 2021 payment was within the statute of limitations.

However, the tax withholding payment in the amount of \$2,304 is deemed to be paid on the original due date of the tax return, or April 15, 2018, pursuant to R&TC section 19002(c)(1). Here, the one-year statute of limitations to claim a refund for the tax withholding payment expired on April 15, 2019, or one year after the original due date of the tax return. (See R&TC, § 19002(c)(1).) Therefore, FTB properly denied appellant's claim for a refund in the total amount of \$1,665, which comprises the \$2,304 tax withholding, less the \$323 of reported tax due and \$316 of filing enforcement cost recovery fee.

On appeal, appellant argues that he was unable to file within the statute of limitations because he was homeless during the pandemic and was unable to access the necessary documents to file the California tax return. However, the language of the statute of limitations must be strictly construed, and there is generally no reasonable cause or equitable basis for suspending the statute of limitations.⁵ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional

⁵ There is one circumstance where the statute of limitations provisions may be suspended, but appellant has not raised it on appeal and the facts do not support its application here. (See R&TC, § 19316.)

harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*) Therefore, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant’s claim for a refund for the 2017 tax year.

DISPOSITION

FTB’s action denying the claim for refund is sustained.

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:
DocuSigned by:
Keith T. Long
DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
88F35E2A835348D...

Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 9/11/2023