

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. GUZMAN

) OTA Case No. 230212592
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OPINION

Representing the Parties:

For Appellant: J. Guzman

For Respondent: Tristen Thalhuber, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Guzman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,500.64 for the 2014 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 is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a California Resident Income Tax Return (return) for the 2014 tax year.
2. FTB obtained information from third-party sources indicating that appellant received income from two companies during the 2014 tax year.
3. On May 3, 2017, FTB issued appellant a Demand for Tax Return (Demand) which required appellant to either file a return, provide a copy of a previously filed return, or provide information showing that he did not have a filing requirement. Appellant did not respond to the Demand by the June 7, 2017 deadline.

4. On July 3, 2017, FTB issued a Notice of Proposed Assessment (NPA) using the income information that it had obtained from various sources. FTB proposed additional tax, penalties, a filing enforcement fee, and interest. FTB explained that appellant needed to file a return or protest, or the NPA would become due and payable on September 1, 2017. Appellant did not timely respond and the NPA became due and payable.
5. On December 4, 2017, FTB issued a Notice of State Income Tax Due showing a balance of \$7,279.09 and explaining that collection activity would occur if left unpaid.
6. On January 9, 2018, FTB issued a Final Notice Before Levy and Lien.
7. FTB began collection action. FTB issued an Order to Withhold Personal Income Tax (order) to appellant's bank and imposed a \$20 collection lien fee. On April 3, 2018, FTB received a payment of \$2,300.
8. On July 9, 2018, FTB issued an additional Income Tax Due Notice.
9. On August 15, 2018, FTB issued an additional Final Notice Before Levy and Lien, and subsequently issued a second order to appellant's bank.
10. On June 15, 2019, FTB received \$220.64.
11. On October 15, 2022, FTB received appellant's untimely 2014 return that reported a total tax of \$0. FTB accepted the return, processed it, and treated it as a claim for refund in the amount of \$2,500.64. FTB abated the penalties and the filing enforcement fee. FTB did not abate the \$20.00 collection lien fee.
12. On December 27, 2022, FTB denied appellant's claim for refund.
13. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be 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 timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed 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. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020 OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) If a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for refund, even if the tax is

alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Federal courts have stated that 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 Cornbleth*, 2019-OTA-408P, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

In the instant appeal, appellant's return was due on April 15, 2015. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file a return within the extended filing period. The second four-year statute of limitations period to file a claim for refund expired on April 15, 2019. However, appellant's return, which was treated as a claim for refund, was not filed until October 15, 2022.

With respect to the final period described in R&TC section 19306(a), the most recent payment on appellant's account was made on June 15, 2019, and appellant's claim for refund is, therefore, barred by the one-year statute of limitations period that expired on June 15, 2020, because appellant filed the claim several years later, on October 15, 2022.

Appellant argues the statute of limitations for claims for refund does not apply because appellant never owed the tax liability. Here, however, since appellant failed to respond to the NPA, FTB pursued collection action which resulted in an overpayment, as opposed to an overcollection (i.e., an amount collected exceeding the amount due under law, as the result of clerical or mechanical error).¹ While an overcollection is not subject to the statute of limitations, a claim for refund on an overpayment is subject thereto. (*Appeal of Cornbleth, supra.*) 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 Benemi Partners, L.P., supra; Appeal of Khan*, 2020-OTA-126P.) Appellant, therefore, is time-barred from recovering a refund.

¹ See FTB's Technical Advice Memorandum (TAM) 2007-01, which is available at <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2007-01.pdf>.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

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

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 8/29/2023