

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
H. GIRON

) OTA Case No. 21119051
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OPINION

Representing the Parties:

For Appellant: H. Giron
For Respondent: Timothy Brown, Graduate Student Assistant

A. KLETTER: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Giron (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$546.29 for the 2015 tax year and \$7,912.50 for the 2016 tax year.

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 claims for refund for the 2015 and 2016 tax years (Years at Issue).

FACTUAL FINDINGS

1. Appellant did not timely file California individual income tax returns (returns) for the Years at Issue.
2. FTB determined that appellant earned sufficient income for the Years at Issue to prompt a filing requirement¹ and issued appellant Notices of Proposed Assessment (NPAs) which estimated appellant’s liability for the Years at Issue. The NPAs subsequently went final.

¹ For the 2015 tax year, the filing threshold for a single individual under 65 years of age with no dependents is gross income of \$16,256 or adjusted gross income (AGI) of \$13,005. For the 2016 tax year, the filing threshold

3. FTB initiated collection action. On April 15, 2018, FTB collected a payment of \$832.31 for the 2015 tax year. On June 3, 2019, FTB collected \$8,200.59 for the 2016 tax year.²
4. On September 13, 2021, appellant filed his returns for the Years at Issue which reported no tax due. FTB accepted the returns as filed, which it treated as claims for refund of \$546.29 for the 2015 tax year and \$7,912.50 for the 2016 tax year.
5. FTB subsequently denied appellant's claims for refund for the Years at Issue. 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 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. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351). The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant untimely filed his returns for the Years at Issue; therefore, the four-year statute of limitations concerning the extended due date is irrelevant. Concerning the four-year statute of limitations from the date the return was filed, appellant filed his returns for the Years at Issue on September 13, 2021, more than four years from the return due dates of April 15, 2016 for the

for such an individual is gross income of \$16,597 or AGI of \$13,278. FTB determined based on third party reporting that appellant earned miscellaneous income in excess of the filing thresholds for the Years at Issue.

² Appellant does not allege that any other payments were collected or made. The parties appear to agree that the \$8,200.59 payment made pursuant to collection was appellant's last payment for the Years at Issue.

2015 tax year and April 15, 2017 for the 2016 tax year. Thus, appellant’s claims for refund are barred under the four-year statute of limitations.

Concerning the one-year statute of limitations, appellant filed his claims for refund on September 13, 2021. No payments were made within one year of the claims for refund. Thus, appellant’s claims for refund are also barred under the one-year statute of limitations.

Appellant claims that he faces hardship, that he has filed his taxes, and that pursuant to his filed returns, he has no tax liability for the Years at Issue. However, a taxpayer’s untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected.³ (*Benemi, supra.*)

HOLDING

The statute of limitations bars appellant’s claims for refund for the Years at Issue.

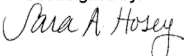
DISPOSITION


FTB’s actions in denying appellant’s claims for refund are sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7
Sara A. Hosey
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D
Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/3/2023

³ R&TC section 19316 provides that the period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is “financially disabled,” as defined in R&TC section 19316(b). Appellant does not contend, and the record does not show, that R&TC section 19316 is applicable here.