

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. GRADY

) OTA Case No. 220811018
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OPINION

Representing the Parties:

For Appellant:

L. Grady

For Respondent:

Josh Ricafort, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Grady (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$1,827.51 for the 2015 tax year, and \$1,924.94 for the 2016 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) 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 claims for refund for the 2015 and 2016 tax years.

FACTUAL FINDINGS

1. For both the 2015 and 2016 tax years, FTB received information indicating that appellant earned income. However, FTB’s records at the time indicated that appellant had not filed the 2015 and 2016 California tax returns.
2. FTB separately issued a Demand for Tax Return (Demand) for the 2015 and 2016 tax years. The Demands both state that appellant may have sufficient income to have a

California filing requirement based on the earned income from San Diego Hospital Assn. The Demands required appellant to file a tax return, send a copy of the tax return if one already had been filed, or explain why appellant was not required to file a tax return. Appellant did not respond to the Demands for the tax years at issue.

3. FTB separately issued a Notice of Proposed Assessment (NPA) for the 2015 and 2016 tax years. FTB estimated appellant's taxable income using the reported earned wage by San Diego Hospital Assn.
4. The 2015 NPA proposed a tax of \$367, a late filing penalty of \$135.00, a notice and demand (demand) penalty of \$310.25, a filing enforcement cost recovery fee of \$81, and applicable interest.
5. The 2016 NPA proposed a tax of \$573, a late filing penalty of \$143.25, a demand penalty of \$320.75, a filing enforcement cost recovery fee of \$84, and applicable interest.
6. Appellant did not protest the 2015 and 2016 NPAs; therefore, both NPAs became final.
7. Appellant entered into a provisional payment plan with FTB making payments for the 2015 tax year. However, appellant defaulted on her provisional payment plan because appellant failed to meet the provisional condition of filing her 2015 and 2016 tax returns. Thereafter, FTB initiated collection action to satisfy the balance due for both tax years.
8. For the 2015 tax year, appellant remitted a total of \$987.51 from March 15, 2018, through July 15, 2019. For the 2016 tax year, appellant remitted a total of \$1,552.23 from July 15, 2019, through November 5, 2019.
9. On April 21, 2022, appellant untimely filed the 2015 and 2016 California resident income tax returns, reporting overpayments. FTB processed appellant's untimely tax returns at issue and determined that appellant had an overpayment of \$1,827.51 for the 2015 tax year, and \$1,924.94 for the 2016 tax year. However, FTB disallowed the overpayment because the return claimed the refund after the expiration of the statute of limitations.
10. 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. (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.)

Appellant's claims for refund in the 2015 and 2016 California tax returns were untimely filed on April 21, 2022. The first four-year statute of limitations is inapplicable because appellant's tax returns at issue were untimely filed. Appellant also does not meet the second four-year statute of limitations because it expired on April 15, 2020, which was postponed to July 15, 2020, due to COVID-19 for the 2015 tax year;¹ and April 15, 2021, which was postponed to May 17, 2021, due to COVID-19 for the 2016 tax year.² With respect to the third statute of limitations period, appellant's most recent payment for the 2015 tax year was collected on July 15, 2019, and for the 2016 tax year was collected on November 5, 2019. Therefore, the one-year statute of limitation for those recent payments expired on July 15, 2020, for the 2015 tax year and November 5, 2020, for the 2016 tax year. However, appellant filed the claims for refund on April 21, 2022. Furthermore, appellant did not file the claims for refund within one year for all other payments made prior to July 15, 2019, or November 5, 2019. Therefore, the claims are barred by the statute of limitations as to all payments for each of the tax years at issue.

Here, appellant claims reasonable cause due to financial hardship. Appellant states that she was unable to get any financial assistance to complete her tax filings in a timely manner. Appellant asserts that she is a single mother with a special needs child and this refund is greatly needed. Appellant also stated that it was difficult during the COVID-19 pandemic to maintain basic essentials. 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.³ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously,

¹ In cases where an applicable statute of limitations to file a timely claim for refund expires during the period of March 12, 2020, through July 15, 2020 ("postponement period"), the FTB will consider the claim timely if filed on or before July 15, 2020. (FTB Notice 2020-02.)

² See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>

³ 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.)

illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*, citing *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) 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.) Appellant’s claims for refund are subject to and barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant’s claims for refund for the 2015 and 2016 tax years.

DISPOSITION

FTB’s action in denying appellant’s claims for refund is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 10/12/2023