

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220911299
L. RIOS AND)
L. G. RIOS)
_____)

OPINION

Representing the Parties:

For Appellants: L. Rios

For Respondent: Brian Werking, Attorney

For Office of Tax Appeals: Julian Adams, Graduate Student Assistant

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Rios (appellant-husband) and L. G. Rios (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,238 for the 2017 tax year.

Appellants 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) Office of Tax Appeals (OTA) Administrative Law Judge Ovsep Akopchikyan held an electronic oral hearing for this matter on July 20, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants’ claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. For the 2017 tax year, appellants paid \$6,047 in tax through withholding payments.
2. On or about April 30, 2022, appellants late-filed their 2017 California income tax return, reported an overpayment of \$4,238, and requested a refund of the overpayment.

3. FTB denied the refund on the basis that appellants filed their refund claim after the statute of limitations expired.
4. 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, in relevant part, that no credit or refund may be allowed unless a refund claim 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Gillespie*, 2018-OTA-052P.)

Appellants acknowledge that they filed their 2017 California income tax return after the statute of limitations expired. Appellants are requesting a refund of the overpayment on the basis that appellant-husband was a hospital administrator during the COVID-19 pandemic, worked 18 to 20 hours a day to keep his patients and staff safe, and, as a result, was forced to put his personal life and financial dealings on hold. While OTA is sympathetic to appellants' circumstances, California law does not allow for suspending the statute of limitations for reasonable cause or an equitable basis. (*Appeal of Gillespie, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

Accordingly, appellants' claim for refund is barred by the statute of limitations.

HOLDING

Appellants' claim for refund is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 10/9/2023