

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
E. AYALA

) OTA Case No. 221011563
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OPINION

Representing the Parties:

For Appellant: E. Ayala

For Respondent: Alisa L. Pinarbasi, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Ayala (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,801.30 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 claim for refund for the 2016 tax year.

FACTUAL FINDINGS

1. FTB received information that appellant received income during the 2016 tax year that resulted in a California tax return filing requirement.
2. Appellant had no tax return on file for that year. As such, FTB issued a Request for Tax Return (Request) to appellant dated April 5, 2018, requesting that appellant file a tax return for the 2016 tax year or provide evidence showing that appellant had no filing requirement for the 2016 tax year, by May 9, 2018.¹

¹ OTA makes this finding based on a reference in the Notice of Proposed Assessment (NPA) to a notice FTB sent to appellant on April 5, 2018. FTB’s Exhibit Log indicates that Exhibit B is a Request for Tax Return, but another copy of the NPA was included with the exhibits instead.

3. When appellant did not respond to the Request, FTB sent appellant a Notice of Proposed Assessment (NPA), proposing tax based on an estimate of appellant's income and imposing a late-filing penalty, plus interest. The NPA became final after appellant failed to timely protest the proposed assessment.
4. FTB issued a Notice of State Income Tax Due to appellant, requiring payment by September 19, 2018. After receiving no response from appellant, FTB engaged in collection action.
5. FTB received payments through its collection activity, with the last payment being on October 2, 2019.
6. On August 30, 2022,² appellant filed a joint 2016 California tax return, reporting zero total tax.
7. FTB treated appellant's 2016 California tax return as a claim for refund and denied appellant's claim for refund on the basis that the statute of limitations had expired.
8. Appellant then filed this timely appeal.

DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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 R&TC section 18567 or 18604 (whichever is applicable); (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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for

² In its opening brief, FTB makes conflicting claims about when appellant filed her 2016 California tax return, stating it was filed on August 18, 2022, and on September 19, 2022 (which is the claim denial date). Appellant's California tax return has a handwritten notation at the top of the first page indicating that the return was filed on August 30, 2022. OTA takes judicial notice of the fact that such notations are usually contemporaneous notes indicating the date that FTB receives a return. In light of this information, OTA finds that the return was filed on August 30, 2022.

refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA144P (*Benemi*); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602; *Benemi, supra.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84, 100-101 and *U.S. v. Boyle* (1985) 469 U.S. 241, 249.)

Since appellant did not file a timely return, the applicable claim for refund statute of limitations in this appeal is the later of four years from the last day prescribed for filing the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2016 tax year, the four-year statute of limitations period expired on May 17, 2021 (four years from the due date of April 15, 2017, plus time provided under the COVID-19 State of Emergency postponement).³ Appellant did not file a claim for refund until August 30, 2022. Appellant's claim for refund for the 2016 tax year is therefore barred under the four-year statute of limitations.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) According to the record in this appeal, appellant's last payment for the 2016 tax year was made on October 2, 2019. Since appellant filed her claim for refund on August 30, 2022, her claim for refund is barred under the one-year statute of limitations.

In this appeal, appellant does not argue that she filed her California tax return within the prescribed time periods set forth in R&TC section 19306. Rather, appellant's arguments are equitable in nature. Appellant explains that during 2016 and 2017, she was going through a number of stressful life changes that caused her to neglect her filing obligation. Appellant does not offer an explanation of why she did not file her return in the years between 2017 and May 17, 2021. Regardless, OTA can only grant relief where the law specifically allows. The law is clear that the language of the statute of limitations must be strictly construed, and the law

³ R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone certain tax-related deadlines. FTB postponed the four-year statute of limitations for claiming a refund for the 2016 tax year to May 17, 2021, due to the COVID-19 State of Emergency. (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>.)

does not provide a reasonable or equitable basis for suspending the statute of limitations. (*Benemi, supra.*) As explained above, this is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*)

Without a timely refund claim, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2016 tax year.

DISPOSITION

FTB’s action denying appellant’s claim for refund for the 2016 tax year is sustained.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Josh Aldrich
48745BB806914B4...

Josh Aldrich
Administrative Law Judge

Date Issued: 10/5/2023