

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. OLIVAS

) OTA Case No. 230112252
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OPINION

Representing the Parties:

For Appellant: R. Olivas

For Respondent: Alisa L. Pinarbasi, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Olivas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$763 for the 2006 taxable year.¹

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 Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. For taxable year 2006, FTB credited appellant’s tax account with \$786 of withholdings for California tax on April 15, 2007. Appellant made no other payments for taxable year 2006.

¹ Appellant also purported to appeal FTB’s denial of claims for refund for taxable years 2008 and 2010. FTB has no record of appellant’s claims for refund for those years. Appellant has not provided claim denial letters or claims for refund to OTA for those taxable years. Thus, the only taxable year at issue in this appeal is 2006.

2. On October 7, 2022, appellant filed a 2006 California Resident Income Tax Return reporting total tax of \$23 and requesting a refund of withholdings of \$763.
3. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.
4. This timely appeal followed.

DISCUSSION

Generally, no credit or refund of overpaid tax may 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 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).)² The taxpayer has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a claim for refund within the statute of limitations, the claim is barred even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Appellant failed to file a 2006 return by October 15, 2007, the extended due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year statute of limitations period is inapplicable. The second four-year statute of limitations period runs from the original due date of appellant's 2006 return, and thus expired on April 15, 2011, which is four years from the original due date of the return. (R&TC, § 19306(a).) Appellant, however, filed his return for the 2006 taxable year on October 7, 2022, which is beyond the second four-year statute of limitations period prescribed in R&TC section 19306(a).

With regard to the one-year statute of limitations, appellant's withholdings for 2006 are deemed paid on the due date for the tax return, April 15, 2007. (R&TC, § 19002(c)(1).) Thus, to be within the one-year statute of limitations, appellant must have filed a claim for refund on or before April 15, 2008. Appellant's claim for refund, filed on October 7, 2022, is well beyond the one-year statute of limitations prescribed in R&TC section 19306(a). Appellant filed his 2006 return more than ten years after the latest statute of limitations period expired. Appellant's claim for refund is thus barred by the statute of limitations.

² R&TC section 19316(a) provides for a narrow exception under certain circumstances not relevant to this appeal.

Appellant does not assert that he filed his California return within the statute of limitations periods described above. Rather, appellant asserts that FTB “continued to bill me and hold me accountable for my prior tax obligations 2002 through 2005 making me feel that I was unable to file years 2006 through 2016.” Appellant further contends that he had no income from 2011 through 2015, which created a financial hardship for him.


It appears that appellant asserts that he had reasonable cause for not filing his claim for refund within the statute of limitations. Without discussing the merits of appellant’s claims, OTA notes that the statute of limitations may not be tolled based on equitable circumstances or reasonable cause. (*Appeal of Benemi Partners, L.P., supra.*)

HOLDING

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

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/13/2023