

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
N. MCCOY

) OTA Case No. 220811153
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OPINION

Representing the Parties:

For Appellant: N. McCoy

For Respondent: Noel Garcia-Rosenblum, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. McCoy (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,925.95 for the 2015 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.) Office of Tax Appeals (OTA) Administrative Law Judge Eddy Y.H. Lam held an oral hearing for this matter electronically, on August 18, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant’s claim for a refund is barred by the statute of limitations for the 2015 tax year.

FACTUAL FINDINGS

1. Through FTB’s Integrated Non-Filer Compliance (INC) program, FTB received information indicating that appellant received sufficient earned income wages from Lucile Salter Packard Children’s Hospital during the 2015 tax year. However, FTB’s records indicated that appellant had not filed a California Resident Income Tax Return

- (California tax return) for the 2015 tax year. Therefore, FTB issued appellant a Demand for Tax Return (Demand) for the 2015 tax year.
2. The Demand required appellant to file a 2015 California tax return, provide evidence that a 2015 California tax return was already filed, or provide information that he did not have a 2015 filing requirement. However, appellant did not respond to the Demand.
 3. FTB issued a Notice of Proposed Assessment (NPA) for the 2015 tax year. FTB estimated appellant's taxable income based on the information it received from the INC program. The NPA applied the California income tax withholding credit of \$1,259.00, resulting in a proposed tax liability of \$1,307.00, a late filing penalty of \$326.75, and applicable interest.
 4. Appellant did not protest the NPA; therefore, the NPA became final.
 5. FTB did not receive payments from appellant for the 2015 tax year; therefore, FTB issued an Order to Withhold Personal Income Tax. FTB received a total of 13 payments in wage garnishment from July 3, 2019, through December 18, 2018, for a total amount of \$1,878.95, which satisfied the balance due for 2015 tax year.
 6. On May 31, 2022, appellant untimely filed a 2015 California tax return, reporting a tax liability of only \$212.00. FTB processed appellant's untimely 2015 California tax return, abated the late filing penalty, and treated it as a claim for refund in the amount of \$2,925.95.¹ However, FTB denied appellant's claim for a refund due to the statute of limitations.
 7. 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.)

¹ \$2,925.95 = \$1,295.00 tax withholding + \$1,878.95 of payments from July 3, 2019, through December 18, 2018 - \$212.00 tax liability

Appellant’s refund claim is barred by the statute of limitations because appellant did not file the refund claim within the statute of limitations as set forth in R&TC section 19306(a). Appellant’s claim for a refund in the 2015 California tax return was untimely filed on May 31, 2022. As such, the first statute of limitations period is inapplicable because the 2015 California tax return was untimely filed and therefore not filed pursuant to a valid extension of time to file. Appellant also does not meet the second four-year statute of limitations because it expired four years from the original due date of the 2015 California tax return on April 15, 2016, which is on April 15, 2020, and was later postponed to July 15, 2020, due to COVID-19 pandemic.²

With respect to the third statute of limitations period, appellant’s most recent payment towards the 2015 tax year at issue was collected on December 18, 2018.³ Therefore, the one-year statute of limitation for that recent payment expired on December 18, 2019. However, appellant filed her claim for refund on May 31, 2022, which is beyond the December 18, 2019 expiration date. As for appellant’s other payments made prior to December 18, 2018, she also did not file her claim for refund within one year from their respective payment dates. Therefore, the claim is properly barred by the statute of limitations as to all payments for the 2015 tax year at issue.

Here, appellant requests that the overpayment for the 2015 tax year should be refunded back to her because they were a result of wage garnishments and that her wages should not have been garnished in the first place. However, the language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Without a legislatively enacted exception to the statute of limitations, the Office of Tax Appeals does not have the legal authority here to avoid a

² 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.)

³ Appellant’s claimed income tax withholding for the 2015 tax year in the amount of \$1,259.00 is deemed to be paid on the original due date of appellants’ California tax returns on April 15, 2006. (R&TC, § 19002(c)(1).)

seemingly unfair or harsh outcome. (*Appeal of Estate of Gillespie, supra.*) Accordingly, appellant is not entitled to a refund due to the expiration of the statute of limitations.

HOLDING

Appellant’s claim for a refund is barred by the statute of limitations for the 2015 tax year.

DISPOSITION

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

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 11/7/2023