

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. MUNOZ

) OTA Case No. 221212126
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OPINION

Representing the Parties:

For Appellant: J. Munoz

For Respondent: AnaMarija Antic-Jezildzic, Specialist

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Munoz (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$5,220 for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant filed a 2017 California income tax return on August 22, 2018. The return claimed a withholding credit of \$9,149, a tax liability of \$5,220, and a refund due of \$3,929.
2. Respondent subsequently issued a refund of \$3,929.
3. Later, appellant filed an amended 2017 California tax return, requesting a refund of \$5,220. Respondent received the amended tax return on August 23, 2022.
4. Respondent treated the amended tax return as a claim for refund and denied appellant’s claim for refund based on the expiration of the statute of limitations.
5. Appellant filed this timely appeal.

DISCUSSION

The statute of limitations provides, in pertinent part, that no credit or refund may be allowed unless a claim for refund is filed within the later of the following: (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.)

The first statute of limitations period expired on August 22, 2022, four years from the date appellant filed his original return on August 22, 2018. The record shows that respondent received his amended return one day late on August 23, 2022. Appellant contends that he mailed his amended return on August 18, 2022. During this appeal, respondent invited appellant to provide proof of mailing. However, appellant has provided no such evidence. Since the first statute of limitations period expired on August 22, 2022, which is later than when the second statute of limitations period expired on April 15, 2022 (four years after the original due date of April 15, 2018), the second statute of limitations period is inapplicable. Concerning the third statute of limitations period, withholding payments are deemed paid on the return filing due date, which was in this case April 15, 2018. (See R&TC, § 19002(c)(1).) Accordingly, for the withholding payment, the statute of limitations period expired on April 15, 2019, over three years before appellant filed his refund claim. Consequently, appellant has not established that he filed his claim for refund before the expiration of the statute of limitations.

HOLDING

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

DISPOSITION

OTA sustains respondent’s action denying appellant’s claim for refund.

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Huy “Mike” Le
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Huy “Mike” Le
Administrative Law Judge

We concur:

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Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 10/24/2023