

3. On September 22, 2020, FTB contacted appellants informing them that FTB was auditing appellants' 2017 tax return. On January 24, 2022, FTB informed appellants that its audit resulted in no change to appellants' tax liability.
4. On August 15, 2022, appellants filed an amended 2017 tax return revising their reported tax due from \$610,727 to \$597,729 and claiming a refund for the \$12,998 difference.
5. FTB denied appellants' claim for refund and this timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) A taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted to legal obligations. (*Ibid.*)

Appellants do not argue that their claim for refund was filed within the above specified periods. Instead, appellants contend that they had until four years from January 24, 2022, (the date FTB informed them the audit resulted in no change to their tax liability) to file their claim for refund, and thus, their claim for refund filed on August 15, 2022, is timely. However, the language of the statute of limitations must be strictly construed, and the law does not toll the statute of limitations during an open audit.¹ Consequently, appellants' claim for refund is barred by the statute of limitations.

¹ FTB concedes that if appellants executed a waiver of the statute of limitations extending FTB's deadline to issue a deficiency assessment, that waiver would also have extended appellants' deadline to file a claim for refund. (R&TC, § 19308.) There is no evidence in the record, however, that FTB requested, or that appellants executed, such a waiver.

HOLDING

Appellants’ claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

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

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Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

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Richard Tay
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Richard Tay
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

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