

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**R. QUEZADA RODRIGUEZ** ) OTA Case No. 230112237  
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**OPINION**

Representing the Parties:

For Appellant: R. Quezada Rodriguez  
For Respondent: Eric R. Brown, Attorney  
Brad J. Coutinho, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Quezada Rodriguez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$17,436.05 for the 2007 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Asaf Kletter, Amanda Vassigh, and Sheriene Anne Ridenour held an electronic oral hearing for this matter on August 17, 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 refund for the 2007 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely California tax return for the 2007 tax year.
2. Through its Integrated Non-Filer Compliance Program, FTB obtained computer information, based on federal Forms 1098 from Citi Mortgage Inc. and other mortgage

- companies, reporting that appellant paid mortgage interest totaling \$53,897, which indicated income sufficient to trigger a 2007 filing requirement.
3. For the 2007 tax year, FTB estimated appellant's income to be \$215,588, by multiplying the amount of reported mortgage interest appellant paid by four ( $\$53,897 \times 4 = \$215,588$ ).
  4. On May 12, 2010, FTB issued appellant a Request for Tax Return (Request), requiring appellant to file a 2007 tax return, send a copy of the tax return if one already had been filed, or explain why appellant was not required to file a tax return. The Request was mailed to appellant at an address in Tracy, California. FTB did not receive a response to the Request.
  5. On July 19, 2010, FTB issued appellant a Notice of Proposed Assessment (NPA) for the 2007 tax year. The NPA estimated appellant's income to be \$215,588, and, after allowing a deduction of \$53,897 for mortgage interest paid, proposed tax due of \$12,843, a late filing penalty of \$3,210.75, and applicable interest. FTB mailed the NPA to the same Tracy, California address as the Request. Appellant did not protest the NPA, and the liability became final.
  6. FTB undertook collection activity and collected \$17,626.05 on September 4, 2014.
  7. On September 26, 2022, appellant untimely filed his 2007 California tax return, reporting zero taxable income and zero total tax. FTB treated the return as a claim for refund of the overpaid tax, which it denied.
  8. This timely appeal followed.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer 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 of the return (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 to show entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for

any reason bars a refund.<sup>1</sup> (*Appeal of Benemi Partners, L.P., supra.*) Exceptions are not granted on equitable bases or for reasonable cause. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant's 2007 tax return, which was untimely filed on September 26, 2022, is treated as his claim for refund. The applicable four-year statute of limitations for appellant's 2007 refund claim expired on April 15, 2012, which is four years from the original due date of the return, April 15, 2008. Under the one-year statute of limitations, appellant was required to file his refund claim no later than September 4, 2015, which is one year from the date FTB collected \$17,626.05. However, appellant did not file his claim for refund until September 26, 2022, which is after both the four-year and one-year statutes of limitations expired.

Appellant does not dispute that his refund claim was filed late. Instead, appellant contends that during the period his 2007 return was due, appellant experienced financial distress because he had several real estate properties with numerous mortgages that all went into foreclosure, and he lost everything that year. Appellant also contends that due to visa issues, he and his family had to abruptly leave California in September 2007 for Guatemala, which is the reason appellant did not timely file his 2007 tax return. Appellant asserts that while he was in Guatemala, he did not receive the Request or the NPA that FTB sent in 2010, and only knew about the tax liabilities when he returned to the United States in 2022.

However, OTA cannot overlook the untimeliness of appellant's refund claim and can only grant relief where the law specifically allows. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., supra.*) Appellant's untimely filing of a refund claim bars a refund even when the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) For the

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<sup>1</sup> Though not applicable here, financial disability due to medically determined physical or mental impairment is an example of an exception that may suspend the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

reasons described above, appellant's claim for refund is barred under the statute of limitations described in R&TC section 19306(a).

Appellant contends that he did not receive the Request or the NPA since he no longer resided at the Tracy, California address in 2010. However, it is well established that notices sent by FTB to a taxpayer's last known address are sufficient, even if the taxpayer does not receive them. (R&TC, § 18416(b); *U.S. v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810; see also *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) R&TC section 18416(c) provides that “[t]he last known address shall be the address that appears on the taxpayer's last return filed with [FTB], unless the taxpayer has provided to [FTB] clear and concise written or electronic notification of a different address, or [FTB] has an address it has reason to believe is the most current address for the taxpayer.” During the hearing, appellant acknowledged the Tracy, California address was his address of record before he moved to Guatemala, but asserted that he left a forwarding address and received “many mails during all these years,” which implies appellant received correspondences, other than FTB's Request or NPA, while he was out of the country. When OTA asked appellant for clarification regarding his statement that he left a forwarding address, appellant confirmed that he did not notify FTB of his address change. As appellant did not provide FTB notification of a different address, FTB properly mailed appellant the notices to his last known address in Tracy, California.

HOLDING

Appellant’s claim for refund for the 2007 tax year is barred by the statute of limitations.

DISPOSITION

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

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*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

We concur:

DocuSigned by:  
*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

Date Issued: 11/15/2023