

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
BOSCO CONSTRUCTORS INC.) OTA Case No. 220610595
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OPINION

Representing the Parties:

For Appellant: Kathy Cintas, CPA

For Respondent: Alisa L. Pinarbasi, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Bosco Constructors Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$278,311 for the 2015 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. On September 15, 2016, appellant timely filed its 2015 California Corporation Franchise or Income Tax Return (Form 100), which reported that the entire federal net income after state adjustment was subject to California net income tax. As a result, the original tax return reported a total tax of \$295,317, an extension payment credit of \$800, self-imposed penalties and interest of \$5,758, for a total amount due of \$300,275. Appellant’s payment of \$300,275 was sent on the same day of tax return filing.
2. On March 10, 2021, appellant was notified by the Massachusetts Department of Revenue (MA DOR) that it failed to file a Massachusetts Corporate Excise Tax Return.

3. On May 21, 2021, appellant received a letter from the MA DOR of its Notice of Intent to Assess Massachusetts tax in the amount of \$442,472.30 for the 2015 tax year due to the Massachusetts audit findings.¹
4. On September 1, 2021, appellant filed a 2015 Amended Corporation Franchise or Income Tax Return (Form 100X), requesting a refund of \$278,311. On the amended tax return, appellant attached Schedule R showing a California apportionment of 8.0283 percent, reporting a California apportioned business income as \$248,461. Therefore, on the amended return, appellant asserts that only the California apportioned business income is subject to California net income tax, not the entire federal net income after state adjustment as originally reported. Appellant further explained that it filed the amended return due to an audit from MA DOR and that all income was from a singular project located in Massachusetts.
5. FTB accepted appellant's return as a claim for refund, and denied appellant's claim for a refund because it was filed after the expiration of the statute of limitations.
6. 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.)

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). Here, appellant filed its original 2015 California tax return on September 15, 2016, pursuant to an extension of time to file. Thereafter, appellant filed the claim for a refund via the amended 2015 California tax return on September 1, 2021. As to the first statute of limitations period, appellant does not meet the first four-year statute of limitations period because it expired on

¹ MA DOR's Notice of Intent to Assess includes the 2014 tax year in the amount of \$7,872.54, which is not at issue on this appeal.

September 15, 2020, or four years from the date the return was filed on September 15, 2016. 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 the COVID-19 pandemic.²

With respect to the third statute of limitations period, appellant's tax payment in the amount of \$300,275 towards the 2015 tax year at issue was collected on September 15, 2016. Therefore, the one-year statute of limitation for that overpayment expired on September 15, 2017. However, appellant filed its claim for refund on September 1, 2021, which is beyond one year from the date of overpayment or on September 15, 2017.³ Therefore, the claim is properly barred by the statute of limitations as to all payments for the 2015 tax year at issue.

On appeal, appellant generally asserts that the overpayment for the 2015 tax year should be refunded due to reasonable cause because it was unaware that it made a California sourcing mistake until after the audit by MA DOR. The audit resulted in a Massachusetts tax liability of \$442,472.30 for the 2015 tax year.

However, there is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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.*) 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, OTA does not have the legal authority here to avoid a seemingly unfair or harsh outcome. (*Appeal of Estate of Gillespie, supra.*)

² R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone time-sensitive acts. 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 FTB also asserts, and appellant did not contest, that the latest payment for the 2015 tax year was remitted on February 24, 2017, meaning the one-year statute of limitations for that payment expired on February 24, 2018. Here, there is no evidence in the record to indicate that the latest payment was made on February 24, 2017. Nonetheless, the refund claim for all payments made on or before February 24, 2017, would have fallen outside the one-year statute of limitations anyway since the claim for refund was submitted on September 1, 2021.

Appellant also asserts various arguments⁴ including: (1) that the statute of limitations should have been extended by California Rules of Court, emergency rule 9;⁵ (2) that the differing tax assessment periods⁶ between California and Massachusetts caused the delayed discovery of appellant's mistake in sourcing income that unjustly enriched California; and (3) that the other state tax credit was available during the 2015 tax year for appellant. However, appellant's various arguments are all meritless.

As to the first contention, appellant references the California Rules of Court, emergency rule 9, as applicable to pleadings in a court, and that it should extend the statute of limitations here. However, California Rules of Court, emergency rule 9 is unrelated to the statute of limitations for filing the claim for a tax refund in this appeal. (See R&TC, § 19306.) Furthermore, OTA is not a court and lacks the authority to provide appellants with a remedy on that basis. (Gov. Code, § 15672(b).)

As to the second contention, it is not relevant that Massachusetts has a different assessment period for the failure to file a tax return compared to California. Appellant contends that MA DOR's audit revealed an income sourcing mistake made by appellant, leading to appellant owing Massachusetts taxes on the same income it had wrongly reported on its original California tax return. However, because the statute of limitations had expired in California, appellant is unable to seek a refund for the mistake made on its original California tax return, as revealed by the MA DOR audit. Therefore, appellant asserts that this type of double taxation and FTB's aggressive interpretation of the statute of limitations would have offended the Full Faith and Credit clause of the U.S. Constitution. However, to reiterate, 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. (*Appeal of Benemi Partners, L.P., supra.*) Furthermore, OTA is

⁴ To the extent appellant raises arguments that OTA has not addressed, OTA has considered them and found the resolution of these arguments to be inconsequential and meritless for purposes of this appeal.

⁵ As stated in the Advisory Committee Comment, emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. (<https://www.courts.ca.gov/documents/appendix-i.pdf> ; see <https://www.courts.ca.gov/43820.htm> .)

⁶ In Massachusetts, the MA DOR will generally assess the taxpayer for the most recent seven years if the taxpayer failed to file a tax return. (Massachusetts Technical Information Release TIR 11-1; see <https://www.mass.gov/technical-information-release/tir-11-1-limitations-period-for-taxpayers-failing-to-file-tax-returns>.) In California, there is no time limit for FTB to assess taxes if the taxpayer failed to file a tax return. (R&TC, § 19087(a).) However, when a taxpayer filed a tax return in California, FTB generally must assess any additional tax within four years after the relevant return was filed. (R&TC, § 19057.)

precluded from deciding constitutional arguments by both longstanding precedent and constitutional mandate. (Cal. Const., art. III, § 3.5; *Appeal of Acosta and Castro*, 2022-OTA-235P.) Therefore, appellant's second contention does not show that it is entitled to a refund, despite the statute of limitations.

As to appellant's third contention, there is no statutory provision to allow a corporation to use the other state tax credit for the 2015 tax year. (See R&TC, §§ 18001-18006; see also <https://www.ftb.ca.gov/file/personal/credits/other-state-tax-credit.html> .) Therefore, since the provisions for R&TC section 18001 are not applicable to corporate entities, OTA declines to discuss the issue further.⁷

Accordingly, appellant is not entitled to a refund due to the expiration of the statute of limitations.

HOLDING

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

DISPOSITION

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

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Eddy Y.H. Lam

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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

John O. Johnson

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John O. Johnson
Administrative Law Judge

Date Issued: 11/17/2023

⁷ R&TC section 19311.5 provides that on or after January 1, 2009, if any taxes paid to another state result in an allowable credit under R&TC section 18001, a claim for credit or refund of an overpayment of income tax attributable to a credit allowable under R&TC section 18001 may be filed within (1) one year from the date such tax is paid to the other state, or (2) within the period provided in R&TC section 19306, whichever period expires later. However, as discussed, the provisions of R&TC section 19311.5 are not applicable because the allowable credit under R&TC section 18001 does not apply in this appeal.