

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230212633
D. NU)
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OPINION

Representing the Parties:

For Appellant: D. Nu

For Respondent: Brian Werking, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Nu (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,166.05 for the 2014 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether the statute of limitations bars appellant’s claim for refund for the 2014 tax year.

FACTUAL FINDINGS

1. FTB determined that appellant earned sufficient income for the 2014 tax year to prompt a California filing requirement;¹ but it had no record of appellant’s 2014 California income tax return. FTB issued appellant a Demand for Tax Return informing appellant that appellant may have a 2014 California filing requirement and requesting a response.

¹ For the 2014 tax year, the California filing threshold for a single individual under 65 years of age with no dependents is gross income of \$16,047 or adjusted gross income of \$12,838. FTB determined based on third party reporting that appellant earned income in excess of the 2014 California filing threshold, including real property proceeds of \$660,000, as well as dividend and interest income totaling \$100.

2. Appellant replied and provided their age, filing status, and dependents. Appellant listed gross proceeds of \$660,000 and a gain of \$160,341 on a California real property sale.
3. On March 14, 2016, FTB issued appellant a Notice of Proposed Assessment (NPA), which proposed to assess a tax liability of \$28,643, plus penalties and interest. The NPA subsequently went final.
4. FTB initiated collection action. On September 26, 2016, FTB collected a payment and applied \$6,206.05 to appellant's 2014 tax year account.
5. On January 3, 2023, appellant filed a 2014 California income tax return and reported no tax due. FTB accepted the return and treated it as a claim for refund of \$6,166.05.
6. FTB later denied appellant's claim because the statute of limitations had expired.
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 the overpayment. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). 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.*)

Appellant untimely filed the 2014 California income tax return; therefore, the four-year statute of limitations concerning the extended due date is irrelevant. Concerning the four-year statute of limitations from the due date of the return, appellant filed the 2014 California income tax return on January 3, 2023, more than four years after the return due date of April 15, 2015. Thus, the four-year statute of limitations bars appellant's claim for refund for the 2014 tax year.

Concerning the one-year statute of limitations, appellant filed the 2014 claim for refund on January 3, 2023. No payments were made within one year of the claim. Thus, the one-year statute of limitations also bars appellant’s claim for refund.

Appellant claims that they were unaware of an overpayment for the 2014 tax year. However, 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.² (*Benemi, supra.*)

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2014 tax year.

DISPOSITION

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

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 12/8/2023

² R&TC section 19316 provides that the period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is “financially disabled,” as defined in R&TC section 19316(b). Appellant does not contend, and the record does not show, that R&TC section 19316 is applicable here.