

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. LAMB

) OTA Case No. 221212007
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OPINION

Representing the Parties:

For Appellant: S. Lamb
For Respondent: Sarah J. Fassett, Attorney
Jaclyn Zumaeta, Assistant Chief Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Lamb (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,826.46 for the 2013 and \$1,438.47 for the 2014 tax years.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs, tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Richard Tay held an oral hearing for this matter in Cerritos, California, on August 8, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant’s claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

¹ In appellant’s Request for Appeal, appellant listed the 2012 and 2018 tax years as the tax years at issue; however, appellant attached claim for refund denials for the 2013 and 2014 tax years. FTB has no record of claims for refund and has not issued claim for refund denials for the 2012 or 2018 tax years. Thus, OTA does not have jurisdiction over the 2012 and 2018 tax years, and OTA thus treats appellant’s appeal as an appeal of the 2013 and 2014 tax years.

FACTUAL FINDINGS

1. Appellant did not timely file her California income tax returns for the 2013 and 2014 tax years.
2. FTB received information that appellant received income for California tax purposes, and based on that information, FTB estimated appellant's income and issued a Notice of Proposed Assessment for each tax year at issue.
3. FTB's proposed assessment went final, and FTB initiated collection action. FTB received final payments to satisfy appellant's balance due on July 18, 2018, for the 2013 tax year and on July 1, 2020, for the 2014 tax year.
4. FTB received appellant's 2013 and 2014 California income tax returns on August 15, 2022. FTB accepted the returns, and since both returns reported a refund was due, FTB treated them as claims for refund.
5. FTB denied appellant's claims for refund in letters dated September 29, 2022.
6. This timely appeal follows.

DISCUSSION

A claim for credit or refund of an overpayment must be filed within four years from the date the return was filed, if the return was filed within an extension allowed by R&TC sections 18567 or 18604; within four years from the last day prescribed for filing the return without regard to any such extension; or within one year from the date of the overpayment, whichever time period expires later. (R&TC, § 19306(a).) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

Since appellant did not file timely 2013 and 2014 California income tax returns, the four-year statute of limitations to claim a refund for appellant's 2013 tax year expired on April 15, 2018, and for appellant's 2014 tax year on April 15, 2019. Appellant filed her claim

for refund several years after the four-year statute of limitations expired. Thus, the only available statute of limitations here is the one-year statute of limitations that expires within one year of the date of the overpayment. It is undisputed FTB received appellant's final overpayment for the 2013 tax year on July 18, 2018, and for the 2014 tax year on July 1, 2020. The one-year statute of limitations for the last overpayments expired on July 18, 2019, for the 2013 tax year and July 1, 2021, for the 2014 tax year. Appellant filed a claim for refund on August 15, 2022, which is more than three years after the statute expired for the 2013 tax year and more than one year after the statute expired for the 2014 tax year.

Appellant admitted at the hearing that she did not file a timely claim for refund for statute of limitations purposes for the 2013 and 2014 tax year. Appellant also affirmed she did not try to request a refund prior to the expiration of the statute of limitations in any other way. A taxpayer's failure to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Benemi Partners, L.P., supra; Appeal of Khan, supra.*) Thus, appellant's request for a refund is barred by the statute of limitations for the reasons set forth above, and OTA finds no applicable recourse to refund or credit taxes paid since appellant's claims for refund were untimely.

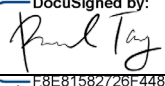
At the hearing and in her opening brief, appellant's main contention is FTB collected too much tax (allegedly, over \$8,000) for the tax years at issue. OTA finds no evidence in the record of FTB collecting over \$8,000 for the 2013 and 2014 tax years, and it appears appellant may be combining the amount collected for appellant's 2012 and 2018 tax years with the amount at issue here. Regardless, OTA has no authority here to compel a refund of tax even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra.*)

HOLDING

Appellant’s claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 10/16/2023