

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230813960
B. MILLER)
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OPINION

Representing the Parties:

For Appellant: G. Miller, Representative
For Respondent: Lawrence Xiao, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Miller (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,306.62¹ for the 2016 tax year.

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.) 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 2016 tax year.

¹ FTB states in its opening brief that the amount of \$2,306.62 reflected on the Statute of Limitations notice denying appellant’s claim for refund (denial notice) is incorrect because FTB erroneously computed the overpayment using a revised total tax liability of \$111 for the 2016 tax year. On appeal, FTB states that “the correct amount of appellant’s total tax liability based on appellant’s reported taxable income ... is \$0.” FTB asserts that the correct amount at issue is \$2,417.62, which is equal to \$2,306.62 plus \$111. However, using the 2016 California tax table, appellant’s tax based on her reported taxable income is \$222, and after applying exemption credits of \$111, her correct tax liability is \$111 (\$222 - \$111 = \$111). Thus, amount reflected on the denial appears to be correct. However, regardless of the claim amount, as explained below, appellant is not entitled to a credit or refund for the 2016 tax year because the statute of limitations bars the claim.

FACTUAL FINDINGS

1. Appellant did not timely file her 2016 California individual income tax return (return). FTB received third-party information reporting that appellant earned retirement and dividend income for the 2016 tax year.
2. FTB subsequently issued appellant a Notice of Proposed Assessment (NPA) for the 2016 tax year, which estimated appellant's income and proposed tax, penalties, interest, and a filing enforcement fee. Appellant did not timely protest the NPA so it became final.
3. Appellant entered into an installment agreement with FTB for the 2016 tax year to pay her balance due. Between June 28, 2021, and November 28, 2022, appellant made payments for the 2016 tax year totaling \$2,762.91. Appellant's two final payments of \$300 and \$62.91 were made on February 28, 2022, and November 28, 2022, respectively.
4. On June 14, 2023, appellant filed a return, reporting total tax and tax due of \$50.² FTB accepted the return, but revised appellant's tax liability from \$50 to \$111 based on the taxable income she reported, the 2016 California tax table, and application of exemption credits of \$111. FTB treated appellant's return as a claim for refund, allowed appellant's final payment of \$62.91 made on November 22, 2022, as timely, and transferred \$63.04³ to appellant's 2018 tax year account. FTB computed a remaining overpayment of \$2,306.62 based on appellant's tax liability of \$111.⁴
5. On July 5, 2023, FTB denied the claim for refund because appellant filed the claim after the statute of limitations expired.
6. This timely appeal followed.

² Appellant reported itemized deductions of \$53,925, which significantly reduced her taxable income. Appellant's return failed to include the installment agreement payments and erroneously reported an amount due.

³ This amount is equal to appellant's final payment of \$62.91 plus allowed interest of \$0.13.

⁴ Appellant made payments of \$2,762.91. Appellant owed tax of \$111, a late-filing penalty of \$111, a notice and demand penalty of \$27.75, a filing enforcement cost recovery fee of \$97, and interest of \$46.63, for a total of \$393.38. As described above, FTB also transferred appellant's final payment of \$62.91 to her 2018 tax year account because appellant's claim for refund was timely with respect to this payment. Therefore, FTB computed and disallowed appellant's remaining overpayment of \$2,306.62 ($\$2,762.91 - \$393.38 - \$62.91 = \$2,306.62$).

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. 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.)

Here, appellant's return was untimely filed; therefore, the four-year statute of limitations for returns timely filed pursuant to extension is inapplicable. Appellant's 2016 return was due on or before April 15, 2017. (See R&TC, § 18566.) Thus, appellant was required to file her claim for refund by May 17, 2021.⁵ However, appellant untimely filed her 2016 claim for refund on June 14, 2023, more than two years later. Thus, OTA finds no error in FTB's determination that appellant's claim for refund was untimely under the four-year statute of limitations.

Under the one-year statute of limitations, in the year prior to filing her claim for refund on June 14, 2023, appellant made a payment of \$62.91 on November 28, 2022. FTB refunded this amount by transferring \$63.04 to her 2018 tax year account balance. Appellant's claim for refund was untimely under the one-year statute of limitations for the remainder of appellant's payments made between June 28, 2021, and February 28, 2022.⁶ Thus, OTA finds no error in FTB's determination under the one-year statute of limitations.

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

⁵ In response to COVID-19, FTB postponed to May 17, 2021, the deadline to file a claim for refund for the 2016 tax year. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

⁶ Appellant confuses the four-year statute of limitations for filing a claim for refund, which, as relevant here, allows a claim for refund for four years following the due date for an untimely filed return, with the one-year statute of limitations, which allows a claim for refund within one year following the date of any overpayment. Here, appellant had to file a claim for refund within one year following the date of any overpayment. Appellant filed her claim for refund on June 14, 2023, and therefore, only overpayments made on or after June 14, 2022, may be refunded under the statute of limitations. (See R&TC, § 19306(a).)

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.*)

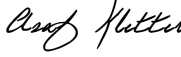
Appellant requests that FTB apply the amount of any refunds to her outstanding debt with FTB. However, appellant's claim was untimely under R&TC section 19306(a). A taxpayer's untimely filing of a claim for any reason bars a credit or refund. (R&TC, § 19306(a); *Benemi, supra.*)

HOLDING

The statute of limitations bars appellant's claim for refund for the 2016 tax year.

DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

Date Issued: 2/7/2024