

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
L. DAM

) OTA Case No. 230312758
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OPINION

Representing the Parties:

For Appellant: L. Dam

For Respondent: Paige Chang, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Dam (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,548 for the 2017 tax year.

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

ISSUE

Whether appellant’s claim for a refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. On November 7, 2022, appellant untimely filed her 2017 California Resident Income Tax Return (Form 540), requesting a refund of \$5,548, after applying California income tax withheld in the amount of \$14,044 to her total tax of \$8,496.
2. 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.
3. 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). Appellant's claim for a refund in the 2017 California tax return was untimely filed on November 7, 2022. As such, the first statute of limitations period is inapplicable because the 2017 tax return was untimely filed and therefore not filed pursuant to a valid extension of time to file. Appellant also does not meet the second four-year statute of limitations because it expired on April 15, 2022, four years from the original due date of the 2017 tax return on April 15, 2018.

With respect to the third statute of limitations period, the only payment appellant remitted was the California income tax withheld in the amount of \$14,044, which is deemed to have been paid on the original due date of the tax return, or April 15, 2018, pursuant to R&TC section 19002(c)(1). (See *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Under the third period, a claim for refund of the withholding credits would be timely if filed within one year from the date the withholding credits are deemed paid. Therefore, to be within the one-year statute of limitations, appellant's claim for refund needed to be filed on or before April 15, 2019. Here, appellant's claim for refund filed on November 7, 2022, is well beyond the one-year statute of limitations prescribed in R&TC section 19306(a). Therefore, the claim is barred by the statute of limitations.

On appeal, appellant asserts that appellant could not timely file the claim of refund due to: (1) the delay in receiving a schedule K-1, and (2) the closure of her tax preparer's office due to COVID-19 health conditions.¹ Appellant further contends that shortly after her tax preparer

¹ Appellant states that her tax preparer finally recovered from his health conditions in September 2022.

recovered his health in September 2022, she met with him to prepare and file her return.

Appellant's assertions here are reasonable cause arguments. 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, the Office of Tax Appeals does not have the legal authority here to avoid a seemingly unfair or harsh outcome. (*Appeal of Estate of Gillespie, supra.*) Accordingly, appellant is not entitled to a refund due to the expiration of the statute of limitations.

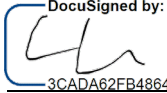
HOLDING

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

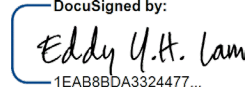
DISPOSITION

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

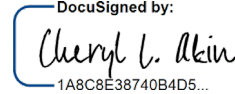
We concur:

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Andrew J. Kwee
Administrative Law Judge

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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 10/10/2023