

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230413014  
**Z. HABASH** )  
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**OPINION**

Representing the Parties:

For Appellant: Z. Habash  
For Respondent: Lawrence Xiao, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Z. Habash (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,248 for the 2017 taxable 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, § 30209.05(b).) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE<sup>1</sup>**

Is appellant’s claim for refund for taxable year 2017 barred by the statute of limitations?

**FACTUAL FINDINGS**

1. Appellant timely filed a 2017 California tax return on April 10, 2018, reporting total tax of \$2,248, withholding credits of \$237, and tax due of \$2,011.
2. Appellant self-assessed an underpayment of estimated tax penalty of \$45. FTB increased the amount of the penalty to \$50. FTB received a single payment of \$2,056 on April 13, 2018. FTB wrote off the remaining \$5.

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<sup>1</sup> In its brief, FTB questions whether amendments to appellant’s tax return can be substantiated. Because OTA finds that the statute of limitations expired, that issue need not be addressed.

3. Appellant filed an amended tax return on January 15, 2023, reporting total tax of \$0 and requesting a refund of \$237 of withholding credits.
4. FTB denied appellant's claim for refund in the amount of \$2,248.<sup>2</sup>
5. Appellant timely appealed FTB's action.

### DISCUSSION

Generally, no credit or refund of overpaid tax will be allowed 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).)<sup>3</sup> A taxpayer has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a claim for refund within the statute of limitations, the claim is barred even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

The first four-year statute of limitations period does not apply because appellant did not file a tax return within a valid extension period. Appellant filed the return on April 13, 2018, which is deemed filed on the filing due date of April 15, 2018. (R&TC, §§ 19002(d)(1), 19066.) Therefore, the second four-year statute of limitations period expired on April 15, 2022, four years after the deemed filing date of April 15, 2018. Appellant did not file an amended return until January 15, 2023, nearly a year after the expiration of the second four-year statute of limitations period prescribed in R&TC section 19306(a). Accordingly, appellant's claim for refund is barred under the four-year statute of limitations period.

With respect to the one-year statute of limitations period, appellant had withholding credits of \$237 and made a single payment of \$2,056 on April 13, 2018. Withholdings are deemed paid on the due date for the tax return, which was April 15, 2018. (R&TC,

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<sup>2</sup> FTB calculated the overpayment amount using the payment of \$2,056 received on April 13, 2018, plus withholdings of \$237, plus a write-off of \$5 minus a \$50 estimated tax penalty ( $\$2,056 + \$237 + \$5 - \$50 = \$2,248$ ). FTB did not reduce the penalty for underpayment of estimated tax based on appellant's revised total tax of \$0 per the amended return. Nevertheless, the entire overpayment is barred by the statute of limitations.

<sup>3</sup> R&TC section 19316(a) provides for a narrow exception under certain circumstances not relevant to this appeal.

§ 19002(c)(1).) Additionally, tax payments made before the payment due date are considered paid on the payment due date, which was April 15, 2018. (R&TC, §§ 19002(d)(2), 19066(a).) Thus, to be within the one-year statute of limitations, appellant must have filed a claim for refund on or before April 15, 2019, one year after the withholdings and tax payment were deemed paid. Accordingly, under the one-year statute of limitations period, appellants claim for refund filed on January 15, 2023, is also barred.

Appellant asserts that he initially filed an amended return in December 2020, which would have constituted a timely claim for refund. In support, appellant claims that he filed both federal and state amended returns for taxable years 2017 and 2018, at the same time. Appellant also contends that he received federal refunds for both of those years, but only received a 2018 refund from FTB. Appellant concludes that FTB must have lost the 2017 amended return. Appellant acknowledges that he lost and cannot provide proof of mailing the tax return in December 2020.

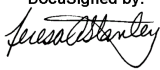
It is appellant's burden to prove that the claim for refund was made timely. (*Appeal of Estate of Gillespie, supra.*) Without substantiating evidence, appellant cannot meet that burden. When FTB confirmed there was no record of appellant filing an amended return in December 2020, FTB directed appellant to submit a copy of the amended return and write "possible duplicate" across the top. The amended return filed on January 15, 2023, does not have those words written on it. Moreover, it is not a copy of the earlier mailed amended return as it is signed and dated in January 2023. Consequently, appellant has not established that he filed the 2017 tax return earlier than January 2023, and his claim for refund is barred by the statute of limitations.

HOLDING

Appellants claim for refund for taxable year 2017 is barred by the statute of limitations.

DISPOSITION

FTB's action denying appellant's claim for refund due to expiration of the statute of limitations is sustained.

DocuSigned by:  
  
Teresa A. Stanley  
Administrative Law Judge

Date Issued: 5/7/2024