OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230413057
M. PASTORES AND	ý
E. GARCIA)
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OPINION

Representing the Parties:

For Appellants: Thai T. Nguyen, CPA

For Respondent: Noel Garcia-Rosenblum, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Pastores and E. Garcia (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund for the 2017 tax year.¹

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

ISSUE

Whether appellants' refund claim was timely.

FACTUAL FINDINGS

- 1. Appellants did not timely file their 2017 California income tax return.
- 2. After requesting but not receiving an income tax return from M. Pastores, respondent issued a Notice of Proposed Assessment (NPA) that proposed to assess tax, interest and other charges based on an estimate of M. Pastores's income. The NPA went final when appellants did not respond.

¹ Appellants' refund claim did not state a refund amount. Respondent calculated an overpayment of \$5,665.33, and appellants' appeal letter states an appeal amount of \$5,665.

- 3. From March 10, 2021, through November 5, 2021, respondent took collection action against appellants which satisfied the deficiency assessment.
- 4. On February 15, 2023, appellants filed a joint 2017 California Resident Income Tax Return (Return) reporting a lower tax due than respondent had assessed.
- 5. Respondent treated the Return as a refund claim and calculated an overpayment of \$5,665.33 for the 2017 tax year.
- 6. On March 20, 2023, respondent notified appellants that their overpayment would not be credited or refunded to them because the Return was filed outside the limitation period for making a refund claim.
- 7. This timely appeal followed.

DISCUSSION

Appellants argue that their refund claim was timely because it was filed after appellants' tax liability had been fully paid in 2021.

Appellants are mistaken as to the time in which a refund claim must be filed, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment. (R&TC, § 19306(a).)

Here, the Return was untimely filed and therefore the time for filing a refund claim is the later of four years from the due date of the return or one year from the date of overpayment. The Return was due on April 15, 2018,² and appellants' last payment for the 2017 tax year was made on November 5, 2021. This means that the latest time for filing a refund claim for the 2017 tax year was November 5, 2022.

The Return, which was filed on February 15, 2023, therefore constitutes an untimely refund claim.

² Individual income tax returns filed on a calendar year basis are due on the 15th day of April following the close of the calendar year. (R&TC, § 18566.)

HOLDING

Appellants' refund claim was untimely.

DISPOSITION

Respondent's action is sustained.

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Kenneth Gast

Kenneth Gast

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Huy "Mike" Le Administrative Law Judge

Administrative Law Judge

We concur:

— Docusigned by: Lawrun Eatagiliara — F595B34010D8470...

Lauren Katagihara Administrative Law Judge

6/5/2024