

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
A. SEYMOUR AND) OTA Case No. 230613467
M. SEYMOUR)
_____)

OPINION

Representing the Parties:

For Appellants: A. Seymour and M. Seymour

For Respondent: Kristin K. Yeager, Program Specialist

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Seymour and M. Seymour (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$8,600.76 for the 2018 tax year.¹

This matter is being decided based on the written record because appellants waived their right to an oral hearing.

ISSUE

Whether the statute of limitations bars appellants’ claim for refund for the 2018 tax year.

FACTUAL FINDINGS

1. FTB received information that appellants received income during the 2018 tax year that resulted in a California tax return filing requirement.
2. Appellants had no tax return on file for that year. As such, FTB issued a Demand for Tax Return (Demand) to appellant A. Seymour dated February 9, 2021, requesting that

¹ Appellants claimed a refund of \$16,138 on their joint 2018 California tax return. FTB, however, calculated an overpayment of \$8,600.76 but denied any refund due to the expiration of the statute of limitations. Appellants state this same amount of \$8,600.76 on their appeal letter.

- appellants file a tax return for the 2018 tax year or provide evidence showing that appellants had no filing requirement for the 2018 tax year, by March 17, 2021.
3. When appellants did not respond to the Demand, FTB sent appellant A. Seymour a Notice of Proposed Assessment (NPA) dated April 29, 2021, proposing tax based on an estimate of appellant A. Seymour's income and proposing a late filing penalty, a demand penalty, and a filing enforcement cost recovery fee, plus interest.
 4. The NPA became final after appellants failed to timely protest the proposed assessment.
 5. FTB later received payments between July 28, 2021, and April 15, 2022.²
 6. On May 8, 2023, FTB received appellants' joint 2018 California tax return, which listed California income tax withholdings of \$4,774, payments of \$18,350, a self-assessed underpayment of estimated tax penalty of \$36, and a refund due of \$16,138.
 7. FTB processed the return, treated it as a claim for refund, and reduced the late filing penalty and the demand penalty. According to FTB's records, appellants' account with FTB then reflected a credit balance (overpayment) of \$8,600.76.
 8. Appellants then filed this timely appeal.

DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to R&TC section 18567; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later,

² FTB's records reflect appellants added the proposed assessment amount for the 2018 tax year to an installment agreement that appellants had established for another tax year, and that FTB subsequently terminated the installment agreement based on appellants' noncompliance with its terms and began involuntary collection actions. After FTB applied payments received as of April 15, 2022, there was a \$1.93 balance owed which FTB wrote off, and appellants' account then reflected a \$0 balance.

even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602; *Appeal of Benemi Partners, L.P., supra.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Since appellants did not file a timely return, the applicable claim for refund statute of limitations in this appeal is the later of four years from the last day prescribed for filing the return (without regard to any extension of time to file) or one year from the date of the overpayment. (R&TC, § 19306(a).) For the 2018 tax year, the four-year statute of limitations period expired on April 15, 2023 (four years from the original due date of April 15, 2019). FTB did not receive appellants' claim for refund until May 8, 2023, which was after the four-year statute of limitations period had expired. Therefore, appellants' claim for refund for the 2018 tax year is barred under the four-year statute of limitations period.

The one-year statute of limitations period only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) The most recent payments on appellants' account, which totaled \$11,586.08, were made no later than April 15, 2022.³ Appellants claim for refund was filed on May 8, 2023, more than one year after April 15, 2022. Thus, appellants' claim for refund is also barred under the one-year statute of limitations.

Appellants assert that the overpayment represents taxes that were never owed, that FTB should have known that appellants file a joint return and claim dependents which would have resulted in a reduced assessment on the NPA, and that FTB did not inform appellants that there was a deadline to file their return and claim a refund.

The Office of Tax Appeals, however, can only grant relief where the law specifically allows. (*Appeal of Estate of Gillespie, supra*; *Appeal of Benemi Partners, L.P., supra.*) The law is clear that the language of the statute of limitations must be strictly construed, and the law does not provide a reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) As explained above, this is true even when it is later shown that the tax was not owed in the first place. (*Appeal of Jacqueline Mairghread Patterson Trust,*

³ For purposes of R&TC section 19306, amounts withheld are deemed to be paid on the original return due date. (R&TC, § 19002(d)(2).)

supra.) FTB does not have the duty to inform taxpayers of an overpayment or of the statute of limitations. (*Appeal of Gleason* (86-SBE-113) 1986 WL 22735).

Appellants’ claim for refund is barred by the statute of limitations.

HOLDING

The statute of limitations bars appellants’ claim for refund for the 2018 tax year.

DISPOSITION

FTB’s action denying appellants’ claim for refund for the 2018 tax year is sustained.

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 6/6/2024