

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513422
G. ANDERSON AND)
S. ANDERSON)
_____)

OPINION

Representing the Parties:

For Appellants: Kirk Reynolds, CPA

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Anderson and S. Anderson (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$75,404 for the 2016 tax year.

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

ISSUE

Whether appellants’ claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On October 15, 2017, appellants timely filed their joint 2016 California income tax return (Original Return). Appellants’ Original Return indicated that appellants made estimated tax payments greater than their liabilities for the 2016 tax year and that appellants’ overpayment on their Original Return was carried forward to the 2017 tax year.

2. Subsequently, on February 7, 2023, appellants filed an amended 2016 California income tax return (Amended Return) reporting an overpayment based on the deduction of a net operating loss (NOL) carryback from the 2018 tax year.
3. FTB processed appellants' Amended Return as a claim for refund, which it denied on the grounds that it was untimely filed.
4. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. For purposes of R&TC section 19306, estimated tax payments are deemed to be paid on the original return due date. (R&TC, § 19002(c)(2).) The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund.¹ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (*Ibid.*; see *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Appeal of Cornbleth, supra.*) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellants' Original Return was timely filed on October 15, 2017, which is within the automatic six-month extension period. Therefore, the first four-year statute of limitations period

¹ Though not applicable here, financial disability due to medically determinable physical or mental impairment of the taxpayer is an example of an exception that may suspended the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

concerning returns filed on extension is applicable. The four-year statutory period for appellants' 2016 refund claim expired on October 15, 2021, which is four years from the date appellants timely filed the return on extension. Under the one-year statute of limitations period, appellants were required to file a refund claim no later than April 15, 2018, which is one year from April 15, 2017, the date appellants' estimated tax payments for the 2016 tax year are deemed paid. (R&TC, § 19002(c)(2).) Appellants filed their refund claim on February 7, 2023, which was untimely under the one-year statute of limitations period.

Appellants admit in their claim that it was filed outside the above-specified periods. Appellants argue that the timeliness of their claim for refund should instead be determined pursuant to Internal Revenue Code (IRC) section 6511(d)(2)(A), which provides for a three-year limitation period beginning on the date the return for the tax year generating the NOL carryback was due. Accordingly, appellants assert that the statute of limitations expired on September 19, 2023, four years after their return for the 2018 tax year was filed on extension, and therefore, their claim for refund was timely. Appellants also contend that because FTB's Publication 1001 – Supplemental Guidelines to California Adjustments does not indicate any differences between California and federal tax law with respect to the limitation period for filing a claim for refund, their claim should be accepted as timely pursuant to the federal statute.

While it is true that California's income tax law generally is based upon federal income tax law (see *Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 904), IRC section 6511 is inapplicable here. California's income tax law, including its statutory administrative provisions where R&TC section 19306 is found, neither incorporates by reference IRC section 6511 nor contains any special statute of limitations provision relating to NOL carrybacks. (Compare R&TC, § 19306 with IRC, § 6511(d)(2)(A).) Furthermore, it is well established that the administrative guidance contained in tax agency publications is not binding on the government and cannot change the plain meaning of tax statutes. (*Appeal of Dandridge*, 2019-OTA-458P.) For the foregoing reasons, IRC section 6511(d)(2)(A) is inapplicable here.

HOLDING

Appellants’ claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

We concur:

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 6/12/2024