

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
C. CLOVER) OTA Case No. 230814086
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OPINION

Representing the Parties:

For Appellant: C. Clover

For Respondent: Ariana Macedo, Graduate Legal Assistant

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Clover (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$7,315.19 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 refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On April 30, 2019, FTB issued a Demand for Tax Return because FTB did not have a record of appellant’s tax return for the 2017 tax year and FTB received information showing that appellant earned sufficient income to prompt a filing requirement.
2. On July 29, 2019, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess \$4,236 of tax, a \$1,059 late filing penalty, a \$1,059 notice and demand penalty, and a \$93 filing enforcement fee, plus applicable interest.
3. On September 27, 2019, the proposed assessment became a final liability because appellant did not protest the NPA and FTB began collection action.

4. On March 15, 2021, FTB received a \$7,632.19 payment.
5. On April 10, 2023, appellant filed a California Resident Income Tax Return (Form 540) reporting \$0 of tax and not claiming a refund. Subsequently, FTB processed appellant's tax return and determined that appellant had a \$7,315.19 overpayment.¹ FTB treated appellant's tax return as appellant's claim for refund.
6. On May 9, 2023, FTB denied appellant's claim for refund.
7. Thereafter, appellant timely filed this appeal.

DISCUSSION

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. (R&TC, § 19306(a).) Tax returns for calendar year taxpayers are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) The taxpayer has the burden of proving 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.) 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.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Here, the first four-year statute of limitations period does not apply because appellant did not file a tax return within the extension period. The second four-year statute of limitations period expired on April 15, 2022, which is four years from the original due date of April 15, 2018. The one-year statute of limitations period for appellant's payment expired on March 15, 2022, because FTB received appellant's payment on March 15, 2021. However, appellant filed her claim for refund on April 10, 2023, which is after the statute of limitations

¹ FTB determined that appellant's overpayment was \$7,315.19 (\$7,632.19 - \$317) because appellant made \$7,632.19 in payments and FTB imposed a \$317 collection cost recovery fee.

periods expired. Accordingly, appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

Appellant argues that she was not required to file a tax return because she did not earn sufficient income to prompt a filing requirement. However, the taxpayer’s failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so later. (*Appeal of Benemi Partners, L.P., supra.*) The untimely filing of a claim for refund bars a refund regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Without a timely refund claim, FTB does not have the statutory authorization to refund amounts paid and the Office of Tax Appeals does not have statutory authorization to require FTB to do so. (*Appeal of Estate of Gillespie, supra.*)

Therefore, appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:
DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

Date Issued: 7/9/2024