

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
R. ROSS) OTA Case No. 220911470
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OPINION

Representing the Parties:

For Appellant: Mohammad (Victor) Ansari, Representative

For Respondent: David Muradyan, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Ross (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$5,972.27 for the 2015 tax year.

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

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

FACTUAL FINDINGS

1. Appellant, a California resident, did not file a timely 2015 California Income Tax Return (return) by April 15, 2016.
2. Respondent received reliable information indicating that appellant earned taxable income during 2015 in an amount sufficient to require appellant to file a return.
3. On April 4, 2017, respondent sent appellant a Demand for Tax Return (Demand), which instructed appellant to reply by May 10, 2017, by filing a 2015 return, providing evidence to show that appellant had already filed a 2015 return, or providing information to show that appellant was not required to file a 2015 return.

4. When appellant did not reply to the Demand, respondent sent appellant a June 5, 2017 Notice of Proposed Assessment (NPA) estimating appellant's income and proposing tax of \$6,756, a late-filing penalty of \$1,689, a \$1,689 penalty for failing to timely respond to the Demand, an \$81 filing enforcement fee, and applicable interest. The NPA informed appellant that the proposed assessment would become due and payable 60 days from the issue date if appellant did not select one of two available options explained in the NPA.¹
5. Appellant did not respond to the NPA, which became due and payable.
6. On September 5, 2017, respondent sent appellant a Notice of State Income Tax Due. All tax, penalties and filing enforcement fee remained due, and interest continued to accrue. Appellant did not respond.
7. On October 25, 2017, respondent sent appellant an Income Tax Due Notice. Appellant did not respond.
8. On December 1, 2017, respondent sent appellant a Final Notice Before Levy and Lien, which informed appellant that respondent would take collection action without further notice if the balance was not paid in full within 30 days. Appellant did not respond.
9. In January 2018, respondent began involuntary collection action, including an Earnings Withholding Order for Taxes issued to appellant's employer, an Order to Withhold Personal Income Tax issued to appellant's credit union, and credit transfers from appellant's other tax years.
10. Respondent received 11 involuntary payments from April 18, 2018, and April 15, 2019, which paid the liability in full.
11. Appellant did not file a 2015 return until July 15, 2022. The return reported tax, interest, and penalties that were substantially less than what respondent had assessed and collected.
12. On August 22, 2022, respondent acknowledged receipt of the return and informed appellant that, while his account showed an overpayment of \$5,972.27, respondent could not allow a credit or refund of any amount because the statute of limitations barred such credit or refund.
13. This timely appeal followed.

¹ Appellant's options were to either protest the NPA or waive the right to protest. If appellant waived the right to protest the NPA, the amount shown on the NPA would have become due and payable on August 4, 2017 (subject to a 30-day deferral), if appellant did not file and provide a copy of his 2015 return by that date.

DISCUSSION

Under R&TC section 19306(a), a valid claim for refund must be filed within whichever of the following periods expires later: (1) four years from the date the return was filed, if filed within the extended due date;² (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. The language of R&TC section 19306 must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.)

The untimely filing of a claim bars a suit for refund, regardless of whether the tax is alleged to have been collected erroneously, illegally, or wrongfully. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A statute of limitations is an almost indispensable element of fairness as well as of practical administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.) While the result may seem harsh, especially for claims involving an undisputed overpayment, the occasional harshness is redeemed by the clarity imparted by a clear and strictly enforced statute of limitations. (*Appeal of Cornbleth, supra.*)

Appellant's sole argument is that the "refund was offset when he didn't owe this money." The evidence reveals that respondent did no more than what the law required of it. It identified an unreported liability, instructed appellant to file a return, and when appellant did not do so, respondent used reliable information to estimate the tax due. (R&TC, §§ 18501(a), 19087(a); *Appeal of Sheward*, 2022-OTA-228P.) Respondent added the required penalties, filing enforcement fee, and interest, and it informed appellant regarding the details of its analysis and proposed findings. It was only after appellant repeatedly ignored respondent's requests for information and instructions to take action that the liability became due and payable, and collections began.

The only applicable four-year statute of limitations, measured from the due date of the 2015 return, and the one-year statute of limitations, measured from the date of appellant's last payment, both expired on July 15, 2020, two years before appellant filed the return showing an

² FTB allows an automatic six-month extension to file if the return is filed within six months of the original due date. (Cal. Code Regs., tit. 18, § 18567.) This granting of the extension is conditioned solely upon the filing of a return within the automatic extension period. (*Ibid.*) If the return is not filed within six months of the original due date, no extension is allowed. (*Ibid.*) This provision is not applicable here because appellant did not file a timely return.

overpayment.³ Thus, contrary to appellant’s argument, appellant did owe the amount collected, the liability having been legally and properly established, when the payments were received. (R&TC, §§ 19087(a), 19042.) OTA finds that what happened here was a series of unfortunate missteps by appellant that allowed the statute of limitations to bar the claim.

HOLDING

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

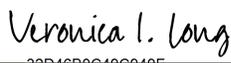
DISPOSITION

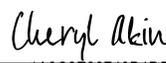
Respondent’s action denying appellant’s claim for refund is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Veronica I. Long
Administrative Law Judge

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 7/12/2024

³ Four years from the original April 15, 2016 due date of the 2015 return was April 15, 2020, and one year from appellant’s last payment made on April 15, 2019, was also April 15, 2020. Respondent has acknowledged that as an accommodation to taxpayers for difficulties arising from the COVID-19 pandemic, respondent postponed to July 15, 2020, statutes of limitations on claims for refund that were due to expire between March 12, 2020, and July 14, 2020.