

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
M. KUMAR ) OTA Case No. 230914395  
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**OPINION**

Representing the Parties:

For Appellant: M. Kumar  
For Respondent: Rachel Glass, Graduate Legal Assistant

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Kumar (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,844 for the 2018 tax year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. Respondent sent appellant a request to file a California income tax return for the 2018 tax year because respondent believed appellant received income during that tax year. Appellant did not respond to respondent’s request or file a 2018 tax return.
2. Respondent then sent appellant a Notice of Proposed Assessment which estimated appellant’s income and proposed tax of \$8,527, net tax due of \$1,716 (after application of withholdings of \$6,811), a late filing penalty of \$429, and applicable interest. Respondent subsequently provided appellant with a notice for the final balance due for the 2018 tax year, adjusted for accrued interest.

3. Respondent imposed collection, lien and installment agreement fees for appellant's 2018 tax year totaling \$370.<sup>1</sup>
4. On November 28, 2022, appellant made a \$161.41 payment on his 2018 tax year balance due. Between May 5, 2023, and August 7, 2023, appellant made additional payments totaling \$184 for his 2018 balance due under an installment agreement, for total payments of \$345.41 (including the November 28, 2022 payment).
5. On August 15, 2023, appellant untimely filed a California income tax return which reported total California income tax of \$0, California income tax withheld totaling \$6,811, and use tax totaling \$2,597. Respondent treated appellant's return as a claim for refund of \$4,189.41.<sup>2</sup>
6. Respondent issued a refund to appellant totaling \$345.41 and denied the remaining \$3,844 balance of appellant's claim for refund due to the expiration of the statute of limitations.
7. Appellant 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 relevant 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 an extension of time to file; (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.)

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<sup>1</sup> Calculation: \$316 (collection cost recovery fee) + \$34 (installment agreement fee) + \$20 (lien fee) = \$370.

<sup>2</sup> Respondent calculated appellant's claim for refund as follows: \$6,811 (2018 withholding payments), plus \$345.41 (payments on 2018 balance), less \$370.00 (fees) and \$2,597 (use tax paid), which equals \$4,189.41. After appellant filed his 2018 return, respondent reduced appellant's late filing penalty and accrued interest to \$0.

Since appellant did not file a timely return within the extended filing period, the first four-year statute of limitations period for filing a claim for refund is not applicable. The second four-year statute of limitations period expired on April 15, 2023, four years from the April 15, 2019 original due date for appellant's 2018 return. (R&TC, §§ 18566, 19306(a).) Appellant filed his 2018 return (treated as his claim for refund) on August 15, 2023, which is after the expiration of the second four-year statute of limitations period on April 15, 2023. With respect to the one-year statute of limitations, respondent refunded all payments that appellant made within one year of appellant's refund claimed filed on August 15, 2023, which totaled \$345.41. Respondent disallowed the remaining \$3,844 because those payments were made more than one year prior to August 15, 2023.<sup>3</sup> Accordingly, appellant is not entitled to an additional refund of \$3,844.

Appellant does not dispute that the August 15, 2023 refund claim was filed outside the statute of limitations with respect to the remaining \$3,844. Instead, appellant asserts that he had reasonable cause to untimely file his 2018 California income tax return. Specifically, appellant asserts that he lost his job in 2019, and due to his immigration status, was required to return to his home country by February 2019. As a result, appellant asserts that he was unable to file his 2018 return until 2023, when he returned to the U.S.

However, appellant's failure to file a claim for refund within the statute of limitations, for any reason, bars him from later receiving a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)<sup>4</sup> The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) As a result, although appellant's circumstances are unfortunate, appellant's remaining refund claim of \$3,844 must be disallowed because it was filed outside the statute of limitations.

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<sup>3</sup> Appellant's payments include withholdings which are deemed paid on April 15, 2019, the late day prescribed for the filing of appellant's 2018 return. (R&TC, §§ 19002(c)(1), 18566.)

<sup>4</sup> R&TC section 19316 provides an exception to suspend the refund claim statute of limitations if a taxpayer is considered financially disabled, but appellant does not assert, and the record does not reflect, that he is financially disabled within the meaning of that statute.

HOLDING

The statute of limitations bars appellant’s remaining claim for refund for the 2018 tax year.

DISPOSITION

Respondent’s action is sustained.

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*Seth Elsom*  
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Seth Elsom  
Hearing Officer

We concur:

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*Suzanne B. Brown*  
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Suzanne B. Brown  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 7/31/2024