

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230914424
M. PENROD)
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OPINION

Representing the Parties:

For Appellant: Carole Zepeda, E.A.
For Respondent: Caitlin Russo, Legal Assistant
For Office of Tax Appeals: Louis Ambrose, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Penrod (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,694.86¹ 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 an additional refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. FTB received information that appellant earned income sufficient to prompt a filing requirement for the 2017 tax year, but FTB had no record that appellant filed a 2017 California income tax return (2017 return).
2. FTB later issued appellant a Demand for Tax Return (Demand), which requested that appellant file a 2017 return, submit a copy of the 2017 return if already filed, or explain why appellant did not have a filing requirement for the 2017 tax year. The Demand

¹ Appellant requests a refund of \$7,136.66 on appeal. However, FTB allowed a partial refund of \$2,441.80, and denied the remaining amount of appellant’s claim for refund, which was \$4,694.86. Thus, \$4,694.86 is at issue.

- requested a response by October 30, 2019, and stated that FTB would assess tax based on available information and impose a demand penalty, a late filing penalty, a filing enforcement fee and applicable interest if appellant failed to provide a response by the due date. FTB's records show that appellant did not respond to the Demand.
3. FTB issued appellant a Notice of Proposed Assessment (NPA) dated November 27, 2019, which proposed a net tax liability of \$247, a demand penalty of \$1,600.75, a late filing penalty of \$135, applicable interest, and a filing enforcement fee of \$93. The NPA stated that the proposed assessment would become final unless appellant filed a valid 2017 return or filed a protest of the NPA by January 27, 2020. Appellant did not respond to the NPA, and so the proposed assessment went final and became collectible.
 4. FTB issued a State Income Tax Due Notice dated March 2, 2020. Appellant did not make any payments in response to the Notice and FTB commenced involuntary collection action. FTB received a Treasury Offset Payment (TOP) of \$1,060 and applied it to appellant's 2017 tax year account balance on June 5, 2023.
 5. Appellant filed a 2017 return on August 7, 2023. The 2017 return reported total tax of \$1,150, withholding credits of \$6,156, and overpayment of \$5,006, which appellant requested to be refunded. FTB processed the 2017 return and accepted the reported tax.
 6. On August 17, 2023, FTB transferred \$1,381.80 from appellant's 1994 tax year account to appellant's 2017 tax year account.
 7. On August 24, 2023, FTB issued appellant a refund of \$2,441.80.²
 8. FTB then issued appellant a Statute of Limitations notice dated August 30, 2023, denying appellant's claim for refund of \$4,694.86.
 9. Appellant filed this timely appeal. Appellants provide a certified mailing receipt and a printout of the United States Postal Service (USPS) tracking history for a package.

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

² This amount is comprised of the TOP payment of \$1,060 and the transfer from the 1994 tax year account of \$1,381.80 ($\$1,060 + \$1,381.80 = \$2,441.80$).

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, amounts withheld are deemed to be paid on the original return due date. (R&TC, § 19002(c)(1).) 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.³ (*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.*) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*) 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.)

There is no dispute that appellant's 2017 return was untimely filed after the extended due date. Thus, the applicable four-year statute of limitations beginning from the original due date of the return applies. Appellant's 2017 return was due on April 15, 2018. (See, R&TC, § 18566.) Therefore, appellant's refund claim expired on April 15, 2022, four years from the original due date of the 2017 return.

FTB's records show that the 2017 return was filed on August 7, 2023, outside of the statute of limitations. However, appellant asserts that the 2017 return was filed late on September 24, 2019, but within the statute of limitations. On appeal, appellant attaches a certified mail receipt and a USPS tracking history printout which shows a package was delivered on September 24, 2019. In response, FTB states that its records show that the document mailed on September 24, 2019, was appellant's 2018 return, not the 2017 return. FTB provides a copy of the 2018 return which shows that FTB received it on October 15, 2019. FTB's records also show that appellant's representative made several calls to FTB between October 4, 2022, and July 17, 2023. Notes from a November 8, 2022 phone call show that the representative stated that she would be filing the 2017 return and the 2019 return. Notes from an April 18, 2023

³ Though not applicable here, financial disability due to medically determined physical or mental impairment of the taxpayer is an example of an exception that may suspend the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

phone call show that the representative again stated that she would be filing the 2017 return. Notes from a July 17, 2023 phone call show that the representative inquired whether FTB received returns for the 2017 tax year and other tax years. It is unlikely that FTB would have recorded these statements from the representative between 2022 and 2023, that she would file the return for the 2017 tax year, if it had already been filed in 2019. Thus, based on the evidence presented, appellant has not met his burden of proving that the return was filed earlier than August 7, 2023, and within the four-year statute of limitations.


As stated above, appellant’s return requesting a refund was filed on August 7, 2023. Under the one-year statute of limitations, any payments made on or after August 7, 2022, would be timely with respect to that claim. FTB refunded the TOP which it received on June 5, 2023, and the money which it transferred from appellant’s 1994 tax year account on August 17, 2023. However, appellant’s withholding is deemed to be paid on April 15, 2018, and is outside of the one-year statute of limitations. (R&TC, § 19002(c)(1).) Therefore, FTB cannot refund any additional amount.

HOLDING

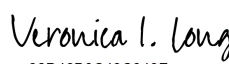
Appellant’s claim for an additional refund is barred by the statute of limitations.


DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

Signed by:

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Josh Lambert
Administrative Law Judge

Date Issued: 8/13/2024