

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613526
W. BAKER)
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OPINION

Representing the Parties:

For Appellant: W. Baker

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Amber Poon, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Baker (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,525.85 for the 2011 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 2011 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file his 2011 California income tax return.
2. Respondent issued a Demand for Tax Return (Demand) to appellant on January 10, 2013. Respondent asked appellant to respond by filing a 2011 tax return, providing evidence that he already filed a 2011 tax return, or explaining why there is no requirement to file a 2011 tax return. Appellant did not respond to the Demand.

3. Respondent issued a Notice of Proposed Assessment to appellant on March 18, 2013, which informed appellant of a tax liability, a late-filing penalty, a demand penalty, and a filing enforcement fee, plus interest.
4. Thereafter, appellant made four separate payments or tax refund transfers (on June 13, 2014; October 8, 2014; January 29, 2015; and December 12, 2017), totaling \$2,431.85.¹
5. On September 21, 2022, appellant filed a 2011 tax return, reporting that no tax was due. On the return, appellant claimed an overpayment of tax of \$114 due to a California income tax withholding of \$114.
6. Respondent treated appellant's return as a claim for refund of \$2,525.85, which includes the payments and refund transfers of \$2,431.85 and the overpayment of \$114 shown on the return.
7. Respondent denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under Personal Income Tax Law, by a taxpayer for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (*Appeal of Cornbleth*, 2019-OTA-408P; R&TC § 19301(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P; Cal. Code Regs, tit. 18, § 30219(a)--(b).)

R&TC section 19306 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. (R&TC, § 19306(a).) 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).) There

¹ Respondent's opening brief lists dates for appellant's payments in June 2014 and December 2017 that differ from those recorded in respondent's Exhibit C. However, the discrepancy does not affect the analysis here.

is generally no reasonable cause or equitable basis for suspending the statute of limitations.² (*Appeal of Benemi Partners, L.P., supra.*)

Here, appellant filed a return for the 2011 tax year on September 21, 2022, which respondent treated as a claim for refund. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable because appellant did not file the return within the extended filing period ending on October 15, 2012. The second four-year statute of limitations period to file a claim for refund expired on April 15, 2016, four years from the original due date of appellant's 2011 return. Appellant's claim for refund was filed after the second four-year statute of limitations period expired.

The alternative one-year statute of limitations period described in R&TC section 19306(a) expired one year from the date of appellant's overpayment. Appellant contends this period began when he filed his return reporting his withholding credit for 2011. However, the withholding credit is deemed as paid on the date the tax return is due, i.e., April 15, 2012. (R&TC, § 19002(c)(1).) Therefore, the one-year statute of limitations expired on April 15, 2013, rendering appellant's refund claim untimely. As for the other payments and tax refund transfers appellant made³ towards the 2011 tax year account, the latest period for those payments expired on December 5, 2018. Therefore, appellant's claim for refund was filed after the one-year statute of limitations period for all payments expired. In sum, appellant did not timely file a refund claim for the 2011 tax year under the four-year or one-year statute of limitations.

The language of the statute of limitations is explicit and must be strictly construed, without exception. (*Appeal of Benemi Partners., L.P., supra.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) For the reasons above, there is no basis to waive the statute of limitations in this appeal.

² There are narrow exceptions where the statute of limitations provisions may be suspended, but appellant has not raised them on appeal and the facts do not support their application here. (See R&TC, § 19316 [financial disability]; R&TC, § 19311 [federal adjustment]; R&TC, § 19312 [bad debt deduction]; FTB Technical Advice Memo 2007-01 (Apr.-23,-2007) [overcollections].)

³ These payments were made from June 5, 2014, to December 5, 2017.

HOLDING

Appellant’s claim for refund for the 2011 tax year is barred by the statute of limitations.

DISPOSITION

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

Signed by:
Kim Wilson

Kim Wilson
Hearing Officer

We concur:

DocuSigned by:
Amanda Vassigh

Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Erica Parker

Erica Parker
Hearing Officer

Date Issued: 8/14/2024