

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
B. RICCI) OTA Case No. 230914380
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OPINION

Representing the Parties:

For Appellant: B. Ricci
For Respondent: Paige Chang, Attorney
For Office of Tax Appeals: Louis Ambrose, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Ricci (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,499.77 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 appellant’s claim for refund for the 2018 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. FTB received information that appellant earned income from the sale of California property in 2018 in an amount sufficient to trigger a filing requirement for the 2018 tax year.
2. Because appellant did not file an income tax return for 2018, FTB issued appellant a Demand for Tax Return (Demand) and requested that appellant respond by filing a 2018 income tax return, submitting a copy of the return if already filed, or providing an explanation as to why appellant was not required to file a return.

3. Appellant did not respond to the Demand and FTB issued a Notice of Proposed Assessment (NPA) to appellant, which estimated appellant's 2018 income based on the proceeds from the sale of California real property and proposed tax of \$8,114, plus penalties, interest, and a fee. The NPA stated that unless appellant filed a tax return or filed a protest, the amount would become due and payable. FTB's records do not show that appellant responded to the NPA.
4. FTB sent appellant multiple notices of the liability due. On May 17, 2021, FTB approved a Provisional Payment Plan and Electronic Funds Transfer Authorization (Payment Plan Authorization), but appellant did not participate and FTB commenced collection efforts. On November 19, 2021, FTB collected a payment in the amount of \$3,282.26. On July 27, 2022, and on September 29, 2022, FTB collected payments of \$550.51 and \$11.94, respectively.
5. On August 15, 2023, FTB received appellant's untimely filed 2018 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR), reporting zero tax due. FTB processed the return and issued appellant a refund of \$11.94.
6. By letter dated September 7, 2023, FTB notified appellant that his 2018 tax year account, after deducting various fees, showed an overpayment of \$3,511.71 and that a refund of \$11.94 was allowed, but that a credit or refund of the balance of \$3,499.77 was barred by the statute of limitations.
7. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in 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 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.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for

refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Because appellant did not file a timely return, the applicable statute of limitations in this appeal is the later of four years from the last day prescribed for filing the tax return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2018 tax year, the four-year statute of limitations period expired on April 15, 2023 (four years from the return original filing due date of April 15, 2019). Appellant did not file a 2018 Form 540NR until August 15, 2023, and a refund or credit for the overpayment for the 2018 tax year is therefore barred by the four-year statute of limitations.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) The last payment of \$11.94, which was credited to appellant's 2018 tax year account was made on September 29, 2022, was within one-year of the date appellant filed the 2018 Form 540NR on August 15, 2023, and FTB refunded that amount. However, the November 19, 2021 and July 27, 2022 payments were made more than a year prior to filing the 2018 Form 540NR and are, thus, barred by the one-year statute of limitations.

Appellant states that he was advised by his tax professional that he did not owe California state income tax in 2018 because he did not have sufficient income. He states that he subsequently received a notice from FTB in 2020, which stated he owed more than \$10,000, and that he contacted FTB multiple times and filed paperwork. He further states that after \$3,511 was taken from his bank account in 2021, he immediately contacted FTB and engaged a tax professional.

The paperwork appellant filed in response to the 2020 notice was apparently a request for a Payment Plan Authorization, which FTB approved in May 2021 that provided for monthly payments of \$225. However, appellant failed to execute the Payment Plan Authorization and FTB commenced collection action. There is no evidence in the record of any further contact made by appellant with FTB until appellant filed the 2018 Form 540NR, which was his claim for refund, on August 15, 2023. Hence, appellant has not shown that a claim for refund was filed

prior to the expiration of the statute of limitations. Furthermore, regardless of any advice given by appellant’s tax professional, a claim for refund that is untimely for any reason is barred by the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*)

HOLDING

Appellant’s claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s denial of the claim for refund is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Date Issued: 8/15/2024