

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
F. BEER) OTA Case No. 230112458
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: F. Beer

For Respondent: Gi Jung Nam, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, F. Beer (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,669.11 for the 2016 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 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Because FTB’s records did not show that appellant had filed a return for 2016, FTB issued a Request for Tax Return (Request). The Request stated that FTB received information that appellant had made mortgage payments during 2016, which indicated he may have a filing requirement and requested that appellant respond by a certain date. The Request provided appellant with instructions for filing a 2016 return, submitting a copy of the return if already filed, or providing information to determine whether appellant was required to file a California return. The Request also stated that FTB

- would impose a late filing penalty and applicable interest if appellant failed to provide a response by the due date. Appellant failed to respond to the Request.
2. FTB then issued a Notice of Proposed Assessment (NPA), which estimated appellant's income for 2016 and proposed a net tax liability of \$3,469, a late filing penalty of \$867.24, and accrued interest. Appellant did not protest the NPA, and it became final.
 3. FTB issued a State Income Tax Balance Due Notice, an Income Tax Due Notice, and a Final Notice Before Levy and Lien. When appellant failed to respond to these notices, FTB commenced collection efforts. FTB received payments of \$131.78, \$500.00, and \$4,917.15 on February 12, 2021, March 30, 2021, and August 25, 2021, respectively.
 4. FTB received appellant's 2016 tax return on November 29, 2022, and determined that appellant had a credit balance of \$5,669.11 for the 2016 tax year. FTB treated the return as a claim for refund of that amount.
 5. FTB denied the claim as barred by the statute of limitations, and appellant then 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 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.)

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 2016 tax year, the four-year statute of limitations period statutorily expired on April 15, 2021 (four years from the return filing due date of April 15, 2017), but that date was extended by FTB to May 17, 2021.¹ Appellant, however, did not file a 2016 Form 540 until November 29, 2022, and a refund or credit for the overpayment for the 2016 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 or credit for appellant's account for the 2016 tax year was a payment of \$4,917.15 on August 25, 2021, which was more than one year prior to the date appellant filed the 2016 Form 540. Thus, appellant's claim is also barred by the one-year statute of limitations.

Appellant contends that he had no filing requirement for 2016 and that FTB based its income estimate on only the mortgage interest payment information rather than the income reported on appellant's Form 1099 and Form W-2. However, even if appellant's assertion is true, the fact that a taxpayer was not required to file a return is not an exception to the statute of limitations for filing a claim for refund. (*Appeal of Benemi Partners, L.P., supra.*)

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.

HOLDING

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

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

DocuSigned by:
Josh Lambert
CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

We concur:
DocuSigned by:
Veronica I. Long
32D46B0C49C949F...

Veronica I. Long
Administrative Law Judge

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...

Kenneth Gast
Administrative Law Judge

Date Issued: 7/25/2024