

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231214895
A. ROBLES)
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OPINION

Representing the Parties:

For Appellant: A. Robles
For Respondent: Caitlin S. Russo, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Robles (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$2,826.53 for the 2016 tax year; \$3,301.18 for the 2017 tax year; and \$2,871.69 for the 2018 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant’s claims for refund for the 2016, 2017, and 2018 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

- 1. Appellant did not timely file a California Resident Income Tax Return for each of the 2016, 2017, and 2018 tax years.
- 2. FTB obtained information indicating that the appellant received sufficient income for each of the 2016, 2017, and 2018 tax years to prompt a return filing requirement but had

- not filed a return. FTB issued a Demand for Tax Return for each of the 2016, 2017, and 2018 tax years, requesting that appellant respond or file California income tax returns. Appellant did not respond or file tax returns as instructed.
3. FTB issued a Notice of Proposed Assessment (NPA) for each of the 2016, 2017, and 2018 tax years, estimating appellant's income and proposing to assess tax, penalties, fees, and interest. Appellant did not respond to any of the NPAs issued, and each proposed liability became final.
 4. FTB commenced collection actions through levies on appellant's bank account. On January 9, 2019, the balance for the 2016 tax year was paid in full. On April 29, 2021, the balance for the 2017 tax year was paid in full. On June 8, 2022, the balance for the 2018 tax year was paid in full.
 5. On November 13, 2023, appellant filed the California Resident Income Tax Returns for the 2016, 2017, and 2018 tax years. FTB accepted appellant's tax returns and treated them as claims for refund. Based on the amount FTB collected through previous bank levies, FTB determined that appellant overpaid the liability by \$2,826.53 for the 2016 tax year; \$3,301.18 for the 2017 tax year; and \$2,871.69 for the 2018 tax year.
 6. FTB denied appellant's refund claims because they were not filed within the statute of limitations.
 7. This timely appeal followed.

DISCUSSION

R&TC section 19306(a), provides, in part, that no credit or refund shall be allowed after a period ending: (1) four years from the date the return was filed (if filed within the extended filing period); (2) four years from the last 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, whichever is later, unless before the expiration of the period, the taxpayer files a claim for refund or credit. As such, appellant must timely claim any overpayments within the later of the three different time periods described above. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations.¹ (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

In this appeal, appellant's tax returns for the 2016, 2017, and 2018 tax years were due on April 15, 2017, April 15, 2018, and April 15, 2019, respectively. Appellant's income tax returns, which are also the claims for refund, were not filed until November 13, 2023. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file the tax returns within the extended filing period. The second four-year statute of limitations period to file a claim for refund for the 2016, 2017, and 2018 tax years expired four years after the original due date of the tax returns, which is May 17, 2021,² April 15, 2022, and April 15, 2023, respectively. Since appellant's claims for refund were not filed until November 13, 2023, it is untimely under the second four-year statute of limitations period. With respect to the one-year statute of limitations period described in R&TC section 19306(a), a refund may only be made for payments made within one-year from the date appellant's claims for refund were filed, which is from November 13, 2022, through November 13, 2023, for this appeal. Here, no payments for the 2016, 2017, or 2018 tax years were made within this one-year statute of limitations period.³ Accordingly, appellant's claims for refund were not timely.

Here, appellant's sole argument on appeal is that no taxes were actually owed, as evidenced by the late filing of the tax returns; therefore, the bank levies were wrongfully collected, and appellant is entitled to a refund. However, as discussed above, appellant's late

¹ Statutory exceptions to the statute of limitations exist, such as R&TC section 19316, which tolls the statute of limitations during a period when a taxpayer establishes a financial disability, but appellant has not asserted, and the record contains no evidence, that any statutory exceptions apply here.

² FTB postponed the date for individual taxpayers to file a claim for refund for the 2016 tax year until May 17, 2021, because of COVID-19. (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>.)

³ The 2016, 2017, and 2018 tax balances were paid in full on January 9, 2019, April 29, 2021, and June 8, 2022, respectively. Therefore, no payments were made between November 13, 2022, and November 13, 2023.


filing of the refund claims precludes a refund, regardless of whether the tax was erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Therefore, appellant has not shown any legal basis to waive the statute of limitations.

HOLDING

Appellant’s claims for refund for the 2016, 2017, and 2018 tax years are barred by the statute of limitations.

DISPOSITION

FTB’s actions denying appellant’s claims for refund are sustained.

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 8/20/2024