

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. LAMOURE) OTA Case No. 221111871
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OPINION

Representing the Parties:

For Appellant: J. Lamoure

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Lamoure (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,250 for the 2015 taxable year.

Appellant waived the right to an oral hearing, so the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Is appellant’s claim for refund for the 2015 taxable year barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not file a timely 2015 California income tax return.
2. On November 6, 2017, and December 11, 2019, FTB sent appellant notices titled “Payments Received – No Return on File.” The notices explained that FTB received estimated tax payments from appellant for the 2015 taxable year but had no record of a corresponding income tax return.
3. On October 9, 2020, FTB sent appellant a notice titled “Unable to Process Tax Documents” stating that FTB received incomplete tax documents on August 28, 2020,

- related to appellant's 2015 income tax return, and requested a new, complete, and signed return filing by November 18, 2020.
4. FTB received appellant's 2015 tax return on April 13, 2022. On the return, appellant reported an overpayment of \$2,962.
 5. FTB processed appellant's return and computed an overpayment of \$3,250 for appellant's 2015 taxable year account (the \$2,962 overpayment reported per the return plus an estimated tax payment of \$288, which appellant did not report on the return).
 6. FTB treated appellant's 2015 tax return as a claim for refund, which it disallowed because it was barred by the statute of limitations.
 7. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year 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).) In an action for refund, the taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence. (Cal. Code Regs, tit. 18, § 30219(a)-(b); *Appeal of Cornbleth*, *supra*.)

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, 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 from income and estimated tax payments are deemed to have been paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1)-(2).)

There is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Except for narrow circumstances not relevant here, a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Here, appellant untimely filed a 2015 tax return on April 13, 2022, which FTB 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 a return within a valid extension period. The second four-year statute of limitations period originally expired on April 15, 2020, but was postponed to July 15, 2020.¹ Appellant's claim was therefore filed after the second four-year statute of limitations period expired.

The alternative one-year statute of limitations period expired one year from the date of appellant's overpayment. Pursuant to R&TC section 19002, appellant's estimated tax payment of \$288 (transferred from the 2014 taxable year) and withholding payments for the 2015 taxable year were deemed paid on April 15, 2016. Thus, the one-year statute of limitations period expired on April 15, 2017. Appellant's claim for refund was filed at least five years after the one-year statutory period expired.

Further, appellant has not provided any evidence to substantiate his claim that several attempts were made to correctly submit the original tax return prior to the expiration of the statute of limitations period. OTA notes that FTB received incomplete tax documents on August 28, 2020, but the second four-year statute of limitations period had already expired on July 15, 2020. Accordingly, because appellant did not timely file a refund claim under the four-year or one-year statute of limitations, appellant's claim is time barred.

Appellant contends that his untimely claim should be excused because he relied on a third-party tax professional to prepare and submit his 2015 tax return. After completing the steps requested of him, appellant understood that the tax professional had submitted the tax return. According to appellant, once his new tax representatives were made aware that the original return was not in fact processed, several attempts were made to submit the same return.

As an initial matter, appellant's contentions are reasonable cause type of arguments. As noted above, there is no waiver of the statute of limitations for reasonable cause. (*Appeal of Benemi Partners, L.P., supra.*) In addition, OTA has consistently applied the rule set forth in *United States v. Boyle* (1985) 469 U.S. 241 (*Boyle*) to income tax returns required to be filed with FTB: the fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with statutory deadlines. (*Boyle, supra*, 469 U.S. at p. 252;

¹ FTB postponed the deadline to request a refund due to the COVID-19 State of Emergency. (See FTB Notice 2020-02.)

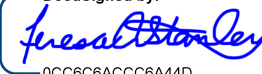
Appeal of Fisher, 2022-OTA-337P.) On that basis, appellant’s reliance on a tax professional does not toll or extend the statute of limitations to claim a refund. Furthermore, although FTB has no duty to discover, or provide notice to the taxpayer of, an overpayment of income tax (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844), FTB’s records show that multiple notices were sent to appellant, within the limitations period, indicating that a return was not duly filed to match appellant’s estimated tax payment of \$288. For the reasons stated above, FTB properly denied appellant’s refund claim for the 2015 taxable year.

HOLDING

Appellant’s claim for refund for the 2015 taxable year is barred by the statute of limitations.


DISPOSITION

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


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Teresa A. Stanley
Administrative Law Judge

We concur:

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Natasha Ralston
Administrative Law Judge

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For
Lauren Katagihara
Administrative Law Judge

Date Issued: 8/20/2024