

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230713763
O. LEYVA)
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OPINION

Representing the Parties:

For Appellant: O. Leyva

For Respondent: Marguerite Mosnier, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Leyva (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,525.66 for the 2007 tax year.¹

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 2007 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return (Return) for the 2007 tax year.
2. FTB received information indicating that appellant paid mortgage interest during the 2007 tax year, which indicated to FTB that appellant may have a California filing

¹ Appellant’s claim for refund did not specify a refund amount. FTB calculated an overpayment of \$3,525.66 and treated it as a claim for a refund of that amount.

- requirement. FTB issued a Demand for Tax Return (Demand) to appellant. There is no indication in the record that appellant responded to the Demand.
3. FTB then issued a Notice of Proposed Assessment (NPA) to appellant based on the information available to FTB. The NPA proposed to assess tax, a late filing penalty, a demand penalty, and a collection cost recovery fee. Appellant did not timely respond to the NPA so the proposed liability became final.
 4. Appellant did not pay the liability. Consequently, FTB initiated involuntary collection action. Between November 30, 2009, and April 20, 2021, FTB collected payments and applied credit transfers of overpayments from other tax years to appellant's 2007 tax year account, the total of which amounted to \$3,762.66.
 5. On March 23, 2023, appellant filed his Return for the 2007 tax year, reporting no taxable income and no tax liability. FTB processed the Return and abated the late filing penalty, the demand penalty, and the collection cost recovery fee.
 6. FTB treated the Return as a claim for refund for \$3,525.66, which it denied. This timely appeal followed.

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. (Cal. Code Regs., tit. 18, § 30219(a); *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, 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. (See R&TC, § 19306(a).) Returns for the 2007 tax year were due April 15, 2008.² Thus, the four-year statute of limitations period expired on April 15, 2012. However, appellant did not file his Return until March 23, 2023 – more than a decade after the statute of limitations expired. Therefore, a refund or credit for the overpayment for the 2007 tax year is barred by the four-year statute of limitations.

Appellant argues that his claim for refund was timely filed because it was filed within four years of the “filing date.”³ Appellant misconstrues the statute of limitations for making a refund claim. Contrary to appellant’s assertion, the filing of appellant’s Return did not trigger the four-year statute of limitations period. As discussed above, the statute of limitations began to run on the date the Return was due, without regard to any extensions (i.e., on April 15, 2008). (*Ibid.*)

With respect to the one-year statute of limitations, only payments made within one year of the date the claim for refund was filed are eligible for refund or credit. (R&TC, § 19306(a).) Appellant’s last payment or credit for the 2007 tax year was posted to his account on April 20, 2021, which was more than one year prior to the date appellant filed his claim for refund. Thus, appellant’s claim is also barred by the one-year statute of limitations.

² Individual income tax returns filed on a calendar year basis are due on the 15th day of April following the close of the calendar year. (R&TC, § 18566.) Therefore, appellant’s Return was due April 15, 2008.

³ Appellant specifies a filing date of February 2023. However, there is no indication in the record that appellant filed a document with FTB in February 2023. Instead, appellant filed his Return for the 2007 tax year in March 2023.

HOLDING

Appellant’s claim for refund of the overpayment is barred by the statute of limitations.

DISPOSITION

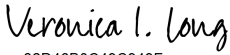
FTB’s action denying the claim for refund is sustained.

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Lauren Katagihara
Administrative Law Judge

We concur:

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Veronica I. Long
Administrative Law Judge

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 8/21/2024