

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230312893  
**R. SCHWARTZ** )  
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**OPINION**

Representing the Parties:

For Appellant: Dennis P. Flynn, CPA

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Schwartz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$41,155 for the 2017 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 is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant, a Florida resident, filed a timely California Nonresident or Part-Year Resident Income Tax Return (540NR) for the 2017 tax year on April 12, 2018, reporting California tax due of \$41,266. Appellant remitted a timely payment of \$41,266 on April 15, 2018.
2. On January 15, 2023, appellant filed an amended 540NR for the 2017 tax year, reporting California tax due of \$111, and an overpayment of \$41,155 (i.e., \$41,266 - \$111). Appellant stated the reason for filing the amended return was that he incorrectly reported certain income as California source income on the original return. Appellant attached a 2017 California Schedule K-1 (Schedule K-1) from a Massachusetts limited liability

company (LLC) in which appellant held about a 12 percent membership interest. The Schedule K-1 reported appellant had less flow-through ordinary income from California sources than appellant previously reported.

3. FTB accepted appellant's amended return as filed and treated it as a claim for refund. However, FTB denied the claim for refund due to the expiration of the statute of limitations. This timely appeal followed.

### DISCUSSION

Generally, no credit or refund shall be allowed or made 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 last date prescribed for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).)<sup>1</sup> The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

On appeal, appellant does not dispute that the claim for refund for the 2017 tax year was untimely filed on January 15, 2023, after the expiration of the statute of limitations. Rather, appellant's position is that the statute of limitations should be waived because California was not entitled to tax the income that appellant originally reported as California source income for the 2017 tax year. Appellant argues that the reporting error resulted in the same income being taxed by California and Massachusetts. Appellant asserts that FTB had a copy of the Schedule K-1 issued to appellant from the Massachusetts LLC, and thus should have known California could not tax the income.

The record in this appeal is silent as to whether FTB received a copy of the Massachusetts LLC income tax return and associated Schedule K-1 for the 2017 tax year. However, whether FTB received a copy of the Schedule K-1 issued to appellant has no bearing on this appeal because FTB has no duty to discover a taxpayer's overpayments of income tax or

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<sup>1</sup> R&TC section 19311.5 provides, in relevant part, that if any taxes paid to another state result in an allowable credit under section 18002, a claim for refund of an overpayment of income tax attributable to a credit allowable may be filed within one year from the date the tax is paid to the other state. R&TC section 18002 generally provides that nonresidents shall be allowed a credit against the net tax for income taxes imposed and paid to the state of residence. Since appellant is a resident of Florida, a state that does not have a state income tax, R&TC section 19311.5 is not applicable in this appeal.

to notify the taxpayer of such overpayments. (See *Appeal of Cervantes* (74-SBE-029) 1974 WL 2844 [taxpayers’ argument that FTB should have notified them of their overpayment did not permit taxpayers to file a claim for refund outside of the statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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.*) This is true even when it is later shown that the tax was not properly owed. (*Ibid.*)

As explained above, a claim for refund that is filed after the expiration of the statute of limitations is statutorily barred. Appellant does not dispute that he filed the claim for refund for the 2017 tax year after the statute of limitations expired. Therefore, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

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

DISPOSITION

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

DocuSigned by:  
*Erica Parker*  
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Erica Parker  
Hearing Officer

We concur:

DocuSigned by:  
*Andrew Wong*  
8A4204817A67463...  
Andrew Wong  
Administrative Law Judge

Signed by:  
*Kim Wilson*  
4E8E740EDB084CD...  
Kim Wilson  
Hearing Officer

Date Issued: 8/22/2024