

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
N. WALLACE) OTA Case No. 230914420
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OPINION

Representing the Parties:

For Appellant: N. Wallace
For Respondent: Christopher T. Tuttle, Attorney
For Office of Tax Appeals: Jennifer Quarters-Styles,
Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Wallace (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,583.25 for the 2017 tax year.¹

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 claim for refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely return for the 2017 tax year.

¹ Appellant’s 2017 tax return reported an overpayment of \$8,325. However, FTB denied the claim for refund in the amount of \$4,583.25. The difference results from FTB’s application of appellant’s payments to penalties and interest, discussed in greater detail below.

2. On July 5, 2019, FTB issued a Demand for Tax Return (Demand) stating that it received information that appellant may have been required to file a California income tax return. FTB demanded that appellant file a return or explain why no return was required. FTB did not receive a response to the Demand
3. On September 26, 2019, FTB issued a Notice of Proposed Assessment (NPA), proposing tax of \$16,244, a late-filing penalty of \$4,061, a penalty for failure to file a return upon notice and demand (demand penalty) of \$4,061, and applicable interest.
4. On November 25, 2019, appellant filed a Quick Resolution Worksheet with FTB, requesting 30 days to file a return. However, appellant did not file a return within 30 days of filing the Quick Resolution Worksheet. Thereafter, FTB began collection actions and imposed a collection cost recovery fee of \$316 and a collection lien fee of \$20.
5. On August 15, 2022, appellant filed an untimely California Resident Income Tax Return for the 2017 tax year reporting a tax of \$13,631. After applying withholding credits totaling \$21,956, appellant claimed a refund of \$8,325.
6. FTB accepted the return as filed and reduced the demand penalty to \$3,407.75. FTB applied a portion of appellant's overpayment to the demand penalty, reducing the claimed refund amount from \$8,325 to \$4,583.25. On September 6, 2022, FTB denied appellant's claim for refund based on the expiration of the statute of limitations.
7. Appellant filed this timely appeal of the claim for refund denial of \$4,583.25.

DISCUSSION

The statute of limitations provides, in relevant 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 under an extension; (2) four years from the date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Tax returns for calendar year taxpayers are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) A return filed before the due date for that return, is considered filed on the due date. (R&TC, §§ 19002(d)(1), 19066(b).) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

For the 2017 tax year, appellant failed to file a return by the due date of April 15, 2018,

or within the automatic extension period. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later, on April 15, 2022. (R&TC, § 19306(a).) Appellant filed his claim for refund on August 15, 2022. Thus, under R&TC section 19306, the four-year statute of limitations expired prior to appellant filing the claim for refund.

The alternative one-year statute of limitations applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Here, appellant made payments in the form of withholding credits, which are deemed paid as of the original due date of the return, April 15, 2018. (R&TC, § 19002.) Thus, appellant's payments were made more than one year before the claim for refund was filed on August 15, 2022. As such, appellant's claim for refund is barred under the one-year statute of limitations.

On appeal, appellant requests that the statute of limitations to file a claim for refund be extended. Appellant asserts that the filing of his return was delayed because of two real estate transactions that occurred during 2017. Appellant also contends that the statute of limitations should be suspended as a result of the COVID-19 pandemic.² Appellant argues that California Rule of Court, Emergency Rules Related to Covid-19, Emergency Rule (Emergency Rule) 9 should be applied to suspend the statute of limitations.³

However, the language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Other than a narrow exception not relevant here,⁴ a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged

² On March 30, 2020, FTB issued FTB Notice 2020-02, extending the statute of limitations date to file claims for refund that would otherwise expire during the period March 12, 2020, through July 15, 2020. (See <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.) As discussed above, the relevant four-year statute of limitations in this appeal expired on April 15, 2022. As such, FTB Notice 2020-02 is inapplicable here.

³ California Rules of Court Appendix I: Emergency Rules Related to COVID-19 sets forth various rules of court in consideration of the COVID-19 pandemic. Emergency Rule 9(a) states: "Notwithstanding any other law, the statute of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." Emergency Rule 9(b) states: "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020." (See https://www.courts.ca.gov/documents/appendix_I.pdf.)

⁴ R&TC section 19316 provides a narrow exception for suspending the statute of limitations when a taxpayer is deemed "financially disabled." A financially disabled taxpayer is unable to manage personal financial affairs by reason of medically determinable physical or mental impairment that is either deemed to be terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1).)

to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the administrative clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Ibid.*)

As to Emergency Rule 9, the Office of Tax Appeals (OTA) notes that the California Rules of Court set forth the rules and requirements for California Courts. However, OTA is not a court and does not have jurisdiction to provide a remedy to appellant based on application of Emergency Rule 9. (See Gov. Code, § 15672(b).) Rather, OTA is an administrative agency, and its jurisdiction concerns appeals from actions by the FTB and the California Department of Tax and Fee Administration. (See Cal. Code Regs., tit. 18, § 30103.) Thus, OTA lacks jurisdiction to extend the statute of limitations based on Emergency Rule 9.

HOLDING

Appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 9/19/2024