

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230713829
M. GARDNER)
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OPINION

Representing the Parties:

For Appellant: M. Gardner

For Respondent: Camille Dixon, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Gardner (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$655 for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to any additional refund for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2018 tax year.
2. FTB obtained information indicating that appellant may have earned sufficient income to trigger a California filing requirement for 2018. On December 21, 2020, FTB issued appellant a Demand for Tax Return (Demand) for the 2018 tax year. Appellant did not timely respond to the Demand.
3. On March 24, 2021, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing to assess tax of \$2,423, which after applying exemption credits of \$118 and withholding of \$636, resulted in a net tax liability of \$1,669. FTB also imposed a late

- filing penalty of \$417.25, a demand penalty of \$576.25, a filing enforcement fee of \$97, and applicable interest.
4. Appellant submitted a response, which FTB received on May 15, 2021, indicating that appellant wanted to protest the NPA and requesting an additional 30 days to file a 2018 tax return. Appellant did not file a tax return within the additional 30-day period.
 5. FTB initiated collection action against appellant and imposed a lien fee of \$20.
 6. On May 8, 2023, FTB received a payment of \$2,270.80.
 7. Also on May 8, 2023, appellant filed a 2018 tax return reporting zero tax and claiming a refund for withholding of \$655.
 8. FTB accepted appellant's return as filed and removed the late filing penalty, demand penalty, and filing enforcement fee. FTB calculated an overpayment of \$2,905.80, consisting of the \$2,270.80 payment and \$655 withholding, less the \$20 lien fee. FTB considered appellant's return as a claim for refund of \$2,905.80.
 9. FTB approved a refund of \$2,270.80. However, on May 30, 2023, FTB issued appellant an Intercept Funds Notice – State Tax Refund, stating that the Kern County Department of Child Support Services had requested FTB intercept appellant's refund of \$2,270.80 to pay a debt owed by appellant to the requesting agency.¹ The notice informed appellant that FTB does not have detailed information about the debt or the authority to cancel it, and that appellant should contact the requesting agency if she disagreed with the notice.
 10. FTB denied appellant's claim for refund of \$635 (\$655 withholding less the \$20 lien fee).
 11. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19306(a) provides that 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 due date 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. A taxpayer has the burden of proving entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

¹ Pursuant to Government Code section 12419.3, personal income tax refunds may be used to offset delinquent accounts, including the nonpayment of child or family support accounts.

The language of the statute of limitations is explicit and 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.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period 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.*)

Here, appellant contends that she has overpaid taxes and is owed a refund. Appellant appears to argue that she did not owe a debt to the requesting agency that intercepted her \$2,270.80 refund.

Appellant failed to timely file a California income tax return for the 2018 tax year. Thus, the four-year statute of limitations to file a claim for refund began to run on April 15, 2019, the original due date of the 2018 return, and expired four years later, on April 15, 2023. (See R&TC, § 19306(a).) Appellant did not file her 2018 tax return claiming a refund until May 8, 2023. Therefore, appellant's claim for refund is barred by the four-year statute of limitations.

As to the one-year statute of limitations, FTB applied two payments to appellant's account for the 2018 tax year. The first payment of \$655 was a withholding payment and credited on the due date of the return, or April 15, 2019.² Appellant filed her claim for refund on May 8, 2023, more than one year after the due date of the return. (See, R&TC, § 19306(a).) Therefore, appellant's claim for refund is barred by the one-year statute of limitations.

FTB approved appellant's claim for refund of the \$2,270.80 payment because it was paid less than one year before appellant filed the May 8, 2023 claim for refund. (See R&TC, § 19306(a).) However, as noted above, FTB intercepted the refund as requested by the Kern County Department of Child Support Services. (See *ante*, fn. 1.)

Because FTB did not deny appellant's claim for refund of the \$2,270.80 payment, the refund claim for that payment is not at issue in this appeal. Moreover, appellant has not provided any statutory authority or other legal basis granting OTA jurisdiction over refunds intercepted by a requesting agency. Based on the foregoing, appellant is not entitled to any additional refund.

² Withholding payments are deemed to have been paid on the last day prescribed for filing the return, without regard to any extension of time for filing the return. (R&TC, § 19002(c)(1).) Thus, appellant's withholding payment was credited on the due date of the 2018 tax return, or April 15, 2019.

HOLDING

Appellant is not entitled to any additional refund for the 2018 tax year.

DISPOSITION

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

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

Date Issued: 9/27/2024