

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
D. DAL SANTO AND)
S. COX)
)
)
)
)

OTA Case No. 231214930

OPINION

Representing the Parties:

For Appellants: D. DalSanto and S. Cox

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. DalSanto and S. Cox (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claims for refund of \$7,479.76 and \$4,886.73 for the 2016 and 2017 tax years, respectively.

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

ISSUE

Whether appellants’ claims for refund for the 2016 and 2017 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

2016 Tax Year

1. Appellants did not timely file a 2016 California income tax return.¹

¹ To the extent appellants note in their brief that they filed all appropriate documents with respondent and paid all required taxes and fees, appellants provide no evidence showing that they timely filed a 2016 tax return.

2. Respondent sent appellants a Demand for Tax Return notice instructing them to file a 2016 tax return, send a copy of the tax return if one already had been filed, or explain why they were not required to file a 2016 tax return. Appellants did not respond to the notice.
3. Respondent sent appellants a Notice of Proposed Assessment (NPA) proposing to assess a total amount of \$6,779.03, including a late filing penalty, a demand penalty, a filing enforcement fee, and interest. Appellants did not pay the amount due or protest by the stated deadline. Accordingly, the NPA went final and became collectible.
4. Respondent issued appellants a State Income Tax Balance Due Notice and later a Final Notice Before Levy and Lien. Because appellants did not respond to the notices, respondent issued appellants' bank an Order to Withhold Personal Income Tax notice. The notice required appellants' funds to be withheld to enforce payment of appellants' outstanding amount due in personal incomes taxes.
5. Respondent subsequently received a payment of \$7,479.76 on March 15, 2022, as part of its collection actions, satisfying the balance due on appellants' 2016 tax year account.
6. Appellants filed a joint 2016 California Nonresident or Part-Year Resident Income Tax Return (return) on October 25, 2023, reporting zero California adjusted gross income (AGI), zero total tax, and an overpayment of \$7,630. Respondent processed the return and decreased appellants' tax liability to zero. Respondent also abated the late filing penalty, filing enforcement cost fee, and demand penalty.
7. Respondent treated the return as a refund claim for appellants' \$7,479.76 payment and issued appellants a notice explaining that credit or refund of that amount was disallowed due to the expiration of the statute of limitations. Appellants timely appealed.

2017 Tax Year

8. Appellants did not timely file a 2017 California Income Tax Return.²
9. Respondent sent appellants a Demand for Tax Return notice instructing them to file a 2017 tax return, send a copy of the tax return if one already had been filed, or explain why they were not required to file a 2017 tax return. Appellants did not respond to the notice.

² To the extent appellants note in their brief that they filed all appropriate documents with respondent and paid all required taxes and fees, appellants provide no evidence showing that they timely filed a 2017 tax return.

10. Respondent sent appellants an NPA proposing to assess a total amount of \$4,543.12, including a late filing penalty, a demand penalty, a filing enforcement fee, and interest. Appellants did not pay the amount due or protest by the stated deadline. Accordingly, the NPA went final and became collectible.
11. Respondent issued appellants a State Income Tax Balance Due Notice and later a Final Notice Before Levy and Lien. Respondent imposed a collection cost fee. Because appellants did not respond to the notices, respondent issued appellants' bank an Order to Withhold Personal Income Tax notice. The notice required appellants' funds to be withheld to enforce payment of appellants' outstanding amount due in personal incomes taxes.
12. Respondent subsequently received a payment of \$5,202.73 on March 15, 2022, as part of its collection actions, satisfying the balance due on appellants' 2017 tax year account.
13. Appellants filed a joint 2017 return on October 25, 2023, reporting zero California AGI, zero total tax, and an overpayment of \$5,004. Respondent processed the return and decreased appellants' tax liability to zero. Respondent also abated the late filing penalty, filing enforcement cost fee, and demand penalty.
14. Respondent treated the return as a refund claim for the \$4,886.73 overpayment and issued appellants a notice explaining that refund or credit of that amount was disallowed due to the expiration of the statute of limitations.³ Appellants timely appealed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides 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. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

³ The overpayment of \$4,886.73 on respondent's notice represents appellants' payment of \$5,202.73 minus the collection cost fee of \$316.

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) Absent an exception, 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 owed in the first place. (*Ibid.*)

Respondent has no duty to discover, or provide notice of, a taxpayer's overpayment of income tax. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Furthermore, respondent has no duty to inform a taxpayer of the time within which a claim must be filed. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Ignorance of the law does not excuse the delinquent filing of claims for refund. (*Appeal of Braeunig* (70-SBE-004) 1970 WL 2439.)

Here, appellants do not dispute that their refund claims were untimely filed. Instead, appellants explain that they attempted to reach respondent via phone on multiple occasions to resolve the overpayments of tax but had difficulty in getting meaningful assistance. Additionally, appellants assert that, because they reside and conduct their business in Nevada, respondent lacked legal authority to begin collection actions. Lastly, appellants cite a financial need for the claimed refunds. Thus, appellants request a refund of their overpayments.

As to appellants' attempts to communicate with respondent, respondent did not have a duty to discover or alert appellants of any overpayments that resulted from collection actions, nor a duty to inform appellants of the deadlines to file refund claims for the tax years at issue. (*Appeal of Cervantes, supra.*; *Appeal of Matthiessen, supra.*) As to appellants' assertion that their residence and business location precluded respondent from initiating collection actions, untimely filed claims are barred from refund or credit even when the overpaid amounts are alleged to be erroneously, illegally, or wrongfully collected.⁴ (*Appeal of Benemi Partners, L.P., supra.*) Finally, it is well settled that the statutory period cannot be waived based on reasonable cause, such as appellants' financial hardships. (*Ibid.*) Accordingly, appellants' claims are untimely and may not be refunded.

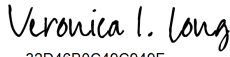
⁴ Notably, R&TC section 18670.5 provides respondent with the authority to require a depository institution to withhold from a taxpayer's bank account the amount of tax, interest, and penalties due, and transmit the amount to respondent.

HOLDING

Appellants’ claims for refund for the 2016 and 2017 tax years are barred by the statute of limitations.

DISPOSITION

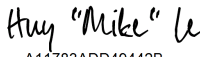
Respondent’s actions denying appellants’ claims for refund are sustained.

Signed by:

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Veronica I. Long
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 9/17/2024