

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
J. THOMPSON) OTA Case No. 230914388
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OPINION

Representing the Parties:

For Appellant: J. Thompson

For Respondent: Caitlin Russo, Legal Assistant

For Office of Tax Appeals: Juan Quezada, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Thompson (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,539.19 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 set forth in R&TC section 19306.

FACTUAL FINDINGS

1. Appellant did not file a timely 2017 California Income Tax return.
2. FTB obtained information indicating that appellant had made mortgage payments on a California property. Based on this information, FTB determined that appellant may have been required to file a return for the 2017 tax year.
3. FTB issued to appellant a Request for Tax Return on October 10, 2020.
4. In response, appellant confirmed that she owned a rental property in Ventura, California, and made mortgage payments on that property. Appellant also noted that there were two

- tenants on the property. Appellant asserted that she was not a California resident and stated that she would file a return.
5. On July 16, 2021, FTB issued a Notice of Proposed Assessment (NPA) because appellant did not file a return. The NPA proposed a tax of \$1,048, plus a late filing penalty of \$262, and applicable interest. Appellant did not respond to the NPA.
 6. On December 3, 2021, appellant made a payment of \$1,532.50, satisfying the liability.
 7. On May 15, 2023, FTB received a 2017 California Nonresident or Part-Year Resident Income Tax Return reporting zero tax due. FTB accepted the return as filed and treated it as a claim for refund.
 8. On June 12, 2023, FTB denied the claim for refund based on the expiration of the statute of limitations.
 9. Appellant timely filed this appeal.

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; (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 15 following the close of the calendar year. (R&TC, § 18566.) Taxpayers have the burden of proving that a claim for refund is timely and that they are entitled to a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars the taxpayer from later claiming refund. (*Ibid.*)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) Such deadlines may appear harsh when missed, but the resulting occasional harshness is validated by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) The controlling date for determining the timeliness of a refund claim is the date when the claim was filed. (R&TC, § 19306.)

Here, appellant failed to file a 2017 tax 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. FTB received appellant's 2017 tax return on May 15, 2023, more than a year after the expiration date. 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).) FTB received a payment of \$1,532.50 on December 3, 2021, and the one-year statute of limitations to file a claim for refund expired on December 3, 2022. Appellant filed her claim for refund on May 15, 2023, five months after the expiration date. For that reason, appellant's claim for refund from overpayment is barred under the one-year statute of limitations.

On appeal, appellant does not present any arguments with respect to the statute of limitations. Instead, appellant asserts that she was not a California resident in 2017, and therefore is not subject to income tax in this state. However, appellant confirmed that she owned rental property in California that was rented to two tenants. California residents are taxed on their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b) & (i), 17951.) Thus, even if appellant was a nonresident in 2017, she may have been required to file a return and pay tax on her California source rental income for that tax year.

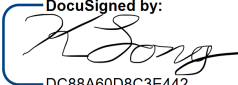
Nevertheless, a taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, *supra*.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*, citing *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) As such, even if appellant did not have a California tax liability, the claim for refund is barred by the statute of limitations.

HOLDING

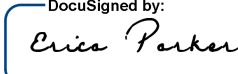
Appellant’s claim for refund is barred by the statute of limitations set forth in R&TC section 19306.

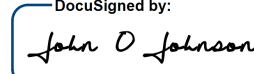
DISPOSITION

FTB’s action denying appellant’s claim for refund of \$1,539.19 is sustained.

DocuSigned by:

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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

6651E0AAC34B4F6
Erica Parker
Administrative Law Judge

DocuSigned by:

873D9797B9E64E1
John O. Johnson
Administrative Law Judge

Date Issued: 10/22/2024