

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. PERSKY) OTA Case No. 230613531
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OPINION

Representing the Parties:

For Appellant: M. Persky
For Respondent: Tristen Thalhuber, Attorney
Cynthia Kent, Attorney Supervisor

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Persky (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$12,758.30 for the 2010 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Josh Lambert, Asaf Kletter, and Eddy Y.H. Lam held a virtual hearing for this matter on August 13, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file a 2010 tax return.
2. FTB received mortgage interest payment information indicating that appellant may have earned income that required him to file a California tax return.
3. On December 28, 2011, FTB sent appellant a Demand for Tax Return (Demand) requiring appellant to either file a 2010 tax return, provide evidence that he already had filed a return, or explain why he did not have a filing requirement.

4. When appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) on February 29, 2012, which estimated appellant's income and proposed an assessment of tax, a late filing penalty, a notice and demand penalty, a filing enforcement fee, and interest.
5. Appellant did not reply to the NPA, and the assessment became final and collectible. FTB began collection action, which included levying appellant's bank account, and imposed a collection lien fee of \$20.
6. FTB collected payments totaling \$12,898.30. Payments totaling \$120 were made on April 13, 2023. A payment of \$1,500.05 was collected on October 15, 2021, and the remaining payments were made or collected prior to that date.
7. On January 30, 2023, appellant untimely filed his 2010 California Resident Income Tax Return, reporting taxable income of zero and total tax of zero.
8. FTB accepted the return as filed and reduced appellant's tax liability to zero. FTB also abated the late filing penalty, filing enforcement fee, and notice and demand penalty. FTB determined that appellant's overpayment was \$12,878.30, which is comprised of payments of \$12,898.30 minus the collection lien fee of \$20.
9. FTB treated the return as a claim for refund and refunded appellant \$120 for the payments that were made within one year of filing the claim. FTB denied the remaining amount (\$12,758.30).
10. This timely appeal followed.

DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Appellant did not file a timely return and, therefore, the first four-year statute of limitations period under R&TC section 19306(a) is inapplicable. For the 2010 tax year, the

second four-year statute of limitations period expired on April 15, 2015, four years from the filing due date of April 15, 2011. (R&TC, §§ 18566, 19306(a).) Appellant did not file his return until January 30, 2023. Therefore, appellant's claim for refund is barred under the four-year statute of limitations.

The one-year statute of limitations applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) FTB refunded appellant \$120 of payments made on April 13, 2023. Appellant made a payment of \$1,500.05 on October 15, 2021, and all other payments were made prior to that date. Therefore, appellant's remaining payments were made more than one year from the date of appellant's claim for refund on January 30, 2023, and are barred under the one-year statute of limitations.

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.)¹ 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.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

At the hearing, appellant testified that, beginning in 2009, he was a nonresident of California and earned no California income. Appellant testified that it was not until 2014 or 2015 that he discovered FTB assessed the tax and levied his bank account.² Appellant stated that for 2010, he had no California income and owed no tax. Appellant also stated that he had no California filing requirement and only filed a return to request a refund of the amount FTB collected.

In this case, after appellant filed his claim for refund, FTB reduced appellant's tax liability to zero. Therefore, appellant did not have a filing requirement or owe tax. However, there is no authority granting an exception to the statute of limitations on this basis. (*Appeal of*

¹ The time for filing a claim for refund may be extended if an individual taxpayer is "financially disabled," meaning he or she is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) Appellant does not provide any argument or evidence to show he was financially disabled.

² Appellant's briefing states that, because he moved out of California, he was unaware of correspondence which FTB sent to his previous address in California.


Benemi Partners, L.P., supra.) As previously noted, the failure to timely file a claim for refund bars a refund even if it is later shown that the tax was not owed in the first place. (*Ibid.*) As a result, 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 denying appellant’s claim for refund is sustained.


Signed by:

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Josh Lambert
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 10/23/2024