

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
P. REYNOSO ) OTA Case No. 230814198  
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**OPINION**

Representing the Parties:

For Appellant: L. David Gomez, Jr., CPA  
For Respondent: Paige Chang, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Reynoso (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$11,171.84 for the 2017 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE<sup>1</sup>**

Is appellant’s claim for refund barred by the statute of limitations (SOL)?

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2017 California tax return. FTB estimated appellant’s income and issued a Notice of Proposed Assessment (NPA), which went final when appellant did not file a tax return or protest the NPA. The NPA credited appellant with \$912 in withholdings paid.<sup>2</sup>

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<sup>1</sup> Appellant asserts in a letter attached to his opening brief that only \$19,410 of his earnings were California sourced income. Because OTA finds below that appellant’s claim for refund is barred by the SOL, appellant’s contention is not discussed further.

<sup>2</sup> Appellant’s Forms W-2, Wage and Tax Statements, show that \$827.96 was withheld for California taxes and \$238.24 was withheld for Louisiana taxes. FTB credited appellant with \$912 in withholdings, which favors appellant.

2. FTB placed a lien on appellant's wages and collected \$10,575.84 between April 15, 2022, and June 15, 2022.
3. Appellant filed a 2017 California tax return on July 6, 2023, requesting a refund of \$11,488.<sup>3</sup>
4. FTB denied appellant's claim for refund on the basis that the SOL to file a claim for refund had expired. This timely appeal followed.

### DISCUSSION

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 for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no reasonable cause or equitable basis for suspending the SOL. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a claim for refund within the SOL, the claim is barred even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*).

Appellant failed to file a 2017 return by October 15, 2018, the extended due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year SOL period, which refers to timely filed returns filed during the extension period, is inapplicable. The second four-year SOL period runs from the original due date of appellant's 2017 return, and thus expired on April 15, 2022, which is four years from the April 15, 2018 original due date of the 2017 return. (R&TC, §§ 18566, 19306(a).) Appellant, however, filed his return for the 2017 taxable year on July 6, 2023, which is beyond the second four-year SOL period prescribed in R&TC section 19306(a).

Regarding the one-year SOL period, appellant's withholdings for 2017 are deemed paid on the due date for the tax return, April 15, 2018. (R&TC, § 19002(c)(1).) Thus, to be within the one-year SOL, appellant must have filed a claim for refund on or before April 15, 2019, to claim a refund of withholdings. Appellant's claim for refund, filed July 6, 2023, is beyond the

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<sup>3</sup> Appellant's claim includes payments totaling \$10,576 (rounded) plus \$912 in withholdings, which is the amount reflected in FTB's records and which FTB credited on the NPA prior to taking collection action.

one-year SOL prescribed in R&TC section 19306(a). FTB placed a lien on appellant's wages and collected \$10,575.84 between April 15, 2022, and June 15, 2022. To be eligible for a refund of any portion of the \$10,575.84, appellant would have had to file the claim for refund no later than June 15, 2023. Appellant filed his tax return and claimed a refund on July 6, 2023, after the SOL expired.

Appellant alleges that since his wages were garnished on November 16, 2022, the SOL did not expire until November 16, 2023. In support, appellant presents paystubs from pay periods ending on April 2, 2022, June 2, 2022, and November 16, 2022. The first two paystubs show that lien payments were withheld. The November paystub does not show a current withholding for liens. As noted above, however, appellant's last payment was on June 15, 2022. The November 16, 2023 paystub shows the year-to-date amount paid to FTB rather than current lien payments for that pay period. Appellant has not submitted any documentation after June 15, 2022, showing that additional payments were made to FTB after this date. As such, appellant has failed to establish that the claim for refund was timely under the SOL.<sup>4</sup>

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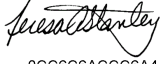
<sup>4</sup> Appellant alleges that federal law should not apply to California taxes. While that is an incorrect understanding, OTA notes that only California law is cited in this appeal.

HOLDING


Appellant’s claim for refund for taxable year 2017 is barred by the SOL.

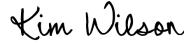
DISPOSITION

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

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

Signed by:  
  
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Kim Wilson  
Hearing Officer

Date Issued: 10/24/2024