

**OFFICE OF TAX APPEALS
 STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
 A. SOERJOHADI AND)
 S. SOERJOHADI)
 _____)

) OTA Case No. 231215013

OPINION

Representing the Parties:

For Appellants: Winston Gunawan, E.A.

For Respondent: Caitlin S. Russo, Legal Assistant

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Soerjohadi and S. Soerjohadi (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$12,935.29, \$11,749.60, and \$11,508.15 for the 2016, 2017, and 2018 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, 2017, and 2018 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants moved abroad in 2013 and rented out their residence. Regardless of the change in circumstances, appellants continued to file California resident tax returns for the 2013, 2014, and 2015 tax years.
2. In 2016, appellants received advice that they no longer needed to file California tax returns. Appellants continued to receive rental income from their property in California and other dividend income.

3. FTB received third-party information that appellants made mortgage payments in 2016, received brokerage income in 2017, and again made mortgage payments in 2018. Accordingly, FTB issued appellants Demands for Tax Returns for the 2016, 2017, and 2018 tax years.
4. When appellants did not respond, FTB issued appellants Notices of Proposed Assessment (NPAs) for 2016, 2017, and 2018.
5. Appellants did not respond and the NPAs went final. FTB issued appellants Notices of State Income Tax Due and, when the balance went unpaid, began involuntary collection action.
6. The final payments received on appellants' 2016, 2017, and 2018 accounts were made on November 23, 2020, May 15, 2021, and August 31, 2022, respectively.
7. On October 15, 2023, appellants untimely filed tax returns for 2016, 2017, and 2018. FTB accepted the returns and treated them as claims for refund. FTB denied appellants' claims for refund on the basis that they were barred by the statute of limitations.
8. This timely appeal follows.

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.)

There is no dispute that appellants untimely filed their 2016, 2017, and 2018 returns on October 15, 2023, which also constituted their claims for refund, and therefore the first four-year statute of limitations is inapplicable. Under the second four-year statute of limitations, appellants' claims for refund for 2016, 2017, and 2018, were required to be filed within four

years from the original due date of the return, or May 17, 2021,¹ April 15, 2022, and April 15, 2023, respectively. Appellants' claims are untimely under the second four-year statute of limitations because they were filed after these dates.

Under the one-year statute of limitations, appellants' claims are only considered timely for payments made within one year of the claim for refund date of October 15, 2023. Appellants' claims are untimely under the one-year statute of limitations because there are no payments on appellants' 2016, 2017, or 2018 tax years accounts within one year of October 15, 2023. Accordingly, appellants' claims for refund were also not timely filed under the one-year statute of limitations.

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund.² (*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.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellants assert they did not timely file their returns because they moved abroad in 2013 and were incorrectly advised that they did not need to file returns. However, there is no equitable tolling of the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) Accordingly, appellants' claims for refund are barred by the statute of limitations.

¹ FTB postponed the deadline for filing claims for refund for the 2016 tax year from April 15, 2021, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

² Though not applicable here, financial disability due to medically determinable physical or mental impairment of the taxpayer is an example of an exception that may suspend the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

HOLDING

Appellants’ claims for refund for the 2016, 2017, and 2018 tax years are barred by the statute of limitations.

DISPOSITION

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

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 8/21/2024