

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
)
G. HITSON-O'NEAL)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: G. Hitson-O'Neal
For Respondent: Lawrence Xiao, Attorney
Christopher T. Tuttle, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Hitson-O'Neal (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$4,938.56 for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Office of Tax Appeals (OTA) Administrative Law Judge Keith T. Long held an oral hearing for this matter electronically on July 23, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California income tax return for the 2017 tax year.
2. FTB received information that appellant earned income sufficient to create a filing requirement. On September 17, 2019, FTB issued a Demand for Tax Return (Demand)

- to appellant demanding that appellant file a return. Appellant did not respond to the Demand.
3. On November 18, 2019, FTB issued a Notice of Proposed Assessment (NPA) to appellant proposing an assessment of additional tax, interest, and penalties of \$3,070.85. Appellant did not respond to the NPA.
 4. FTB began collection actions. On October 2, 2020, FTB transferred an overpayment from appellant's 2016 tax year of \$110 (rounded) to appellant's 2017 tax year. During the period November 2020, through May 13, 2022, FTB collected payments totaling \$3,106. During the period May 26, 2022, through July 8, 2022, FTB collected payments totaling \$450.40.
 5. On May 15, 2023, appellant filed a 2017 tax return reporting total tax of \$38, and, after applying withholding credits of \$2,120, appellant claimed an overpayment of \$2,082.
 6. FTB treated appellant's return as a claim for refund. On June 6, 2023, FTB credited \$450.40 from appellant's 2017 tax year to a balance due for the 2014 tax year. FTB denied the remaining overpayment based on the passage of the statute of limitations.
 7. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within four years from the date of the original tax return, or four years from the date the return was filed if it was filed by the automatic extended due date, or one year from the date of the overpayment, whichever is later. The taxpayer has the burden of proving a timely claim and their entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars her from later claiming a refund. (*Ibid.*)

In this case, appellant did not file a 2017 tax return by the due date of April 15, 2018, or within the automatic extension period, which ended on October 15, 2018. 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. (R&TC, § 19306(a).) Appellant filed the claim for refund on May 15, 2023. 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).) Withholding credits are deemed paid as of the original due date of the return. (R&TC § 19002.) In this case, appellant's withholding credits are deemed paid on April 15, 2018, which is more than one year before the date that appellant filed her claim for refund. Similarly, payments made during the period of October 2, 2020, through May 13, 2022, are barred by the one-year statute of limitations. OTA notes that appellant made payments totaling \$450.40, during the period May 26, 2022, through July 8, 2022, which were timely within the one-year statute of limitations period. However, FTB credited this amount to an outstanding balance for appellant's 2014 tax year in accordance with R&TC section 19362.

On appeal, appellant contends that her claim for refund should not be barred by the statute of limitations. First, appellant asserts that she filed the claim for refund on September 22, 2022. However, appellant has not provided any evidence that she filed a claim for refund on September 22, 2022. Instead, the evidence shows that appellant's claim for refund was filed on May 15, 2023. Accordingly, the one-year statute of limitations expired with respect to any payment made before May 15, 2022. OTA has consistently stated that the one-year statute of limitations applies to payments made within one year of the expiration date. (*Appeal of Gillespie, supra*; R&TC, § 19306(a).)

Appellant attempts to expand the one-year statute of limitations to include all of her tax payments for 2017 because she filed a claim for refund within one-year of the final payment. Specifically, at the oral hearing, appellant argued that “under the continuous injury principle,¹ courts will not disavow a claim on limitation grounds when the injury spans several years.”

¹ Appellant's position misconstrues the “continuing violation doctrine,” which aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192 (*Aryeh*)). In *Aryeh*, a lessee of copier machines brought action against lessor, alleging that lessor had violated the Unfair Competition Law (UCL) by wrongfully charging lessee for “test” copies made by lessor's repair personnel. The California Supreme Court held, for purposes of the UCL, the statute of limitations for a UCL action was not tolled under the continuing violation doctrine since each charge for copies was a discrete, independently actionable wrong. The Court further held, for purposes of the UCL, a new four-year limitations period applied to each of copier machine lessor's alleged continuous unfair acts of charging lessee for “test” copies made by lessor's repair personnel under the theory of continuous accrual. (*Id.* at pp. 1198-1199.) The Court explained that the theory of continuous accrual limits recovery to damages arising from those breaches falling within the limitations period. (*Id.* at p. 1199.) The Court noted that, since the lessee's complaint included excess charges within the required four years preceding the suit, the lessee's suit was not completely barred by the statute of limitations. OTA notes that this is consistent with R&TC section 19306 which provides a separate one-year statutory limitations period for each payment.

However, appellant has not provided, and OTA cannot find, any support that this principle applies in the case of a claim for refund. Instead, the relevant case law shows that the language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a timely claim for refund, the claim is barred 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.

OTA notes that there are limited circumstances under which the statute of limitations may be suspended.² However, appellant has not argued, nor does OTA find, that any of these circumstances exist. OTA understands appellant's contention that she did not file a timely return because she was unsure how the federal audit impacted her state tax liability for the 2017 tax year. Nevertheless, difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie*, 2018-OTA-076P.) Even if there was reasonable cause for appellant's failure to file a timely return, that is not the issue in this case. Instead, the issue is whether appellant's claim for refund is barred by the statute of limitations. In that regard, OTA has no authority to waive the statute of limitations based on reasonable cause or equitable grounds. (*Appeal of Benemi Partners, supra.*)

Finally, appellant contends that she relied on both written and verbal advice from FTB for the timing of her claim for refund. However, appellant has not provided any evidence of written or verbal advice that her claim for refund could be filed outside of the statute of limitations. Accordingly, OTA finds that appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

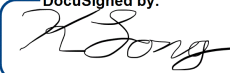
² For example, R&TC section 19316 provides that the statute of limitations may be suspended for taxpayers who establish that they were financially disabled within the meaning of that statute.

HOLDING

Appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

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

DocuSigned by:

DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 10/1/2024