

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
J. VANBUREN) OTA Case No. 230713869
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OPINION

Representing the Parties:

For Appellant: J. Vanburen

For Respondent: Caitlin S. Russo, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Vanburen (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,723.82 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.

FACTUAL FINDINGS

1. Appellant did not file a timely 2017 California income tax return.
2. Based on information indicating that appellant had a filing requirement for 2017, FTB issued a Demand for Tax Return notice (Demand) to appellant on September 20, 2019.
3. FTB did not receive a response to the Demand by the deadline of October 23, 2019. FTB subsequently issued a Notice of Proposed Assessment (NPA) on November 27, 2019, estimating appellant’s income and proposing tax, penalties, interest and a fee totaling

- \$2,830.19. Appellant did not timely protest the NPA by January 27, 2010, and the assessment became final.
4. FTB issued a State Income Tax Balance Due Notice on March 2, 2020.
 5. FTB initiated collection activity and received payments on January 11, 2022; February 4, 2022; March 1, 2022; April 1, 2022; and May 2, 2022.
 6. On April 15, 2023, appellant filed a 2017 California Resident Income Tax Return, reporting total tax of \$0. FTB accepted the return as filed.
 7. FTB allowed a refund of the \$365.90 payment appellant made on May 2, 2022, along with applicable interest. This refund was intercepted by the California Superior Court, County of Orange.
 8. FTB treated appellant's return as a claim for refund, denying it as untimely with respect to all other payments appellant made for the 2017 tax year.¹
 9. This timely appeal followed.

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 pursuant to an extension of time to file; (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).) The taxpayer has the burden of proving that the claim for refund was timely and that the taxpayer is entitled to the refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is no reasonable cause exception or equitable basis for suspending the statute of limitations. (*Ibid.*) 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. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

¹ FTB computed the claim denial amount (\$2,723.82) as follows: appellant's payments totaling \$3,439.72 less collection fees totaling \$350 less the intercepted refund of appellant's \$365.90 payment made on May 2, 2022. Appellant's appeal letter states that appellant made payments totaling \$3,539.72 for the 2017 tax year; however, FTB's records indicate that a payment of \$1,088.33 was collected from appellant on February 4, 2022, rather than \$1,118.33, as indicated by appellant in the appeal letter.

Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Gillespie, supra.*) Although there is a statutory exception for financial disability, appellant has not asserted or established that this exception applies in this appeal.² While the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*)

Appellant's remaining refund claim of \$2,723.82 is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. The first four-year statute of limitations period is not applicable because appellant did not timely file a 2017 return subject to a valid extension. The second four-year statute of limitations period expired on April 15, 2022, because appellant's 2017 return was originally due on April 15, 2018. (R&TC, § 18566.)

The one-year statute of limitations period runs one year from the date of payment. Appellant filed a refund claim on April 15, 2023. FTB refunded the May 2, 2022 payment of \$365.90 plus interest because the claim was within one year of the date the payment was made.³ Appellant's remaining payments were made between January 11, 2022, and April 1, 2022. Appellant's payments made prior to April 15, 2022, are beyond the one-year statute of limitations period because appellant's refund claim was filed on April 15, 2023. Since all payments in dispute were made prior to April 15, 2022, they were paid more than one year before appellant filed his refund claim and are accordingly barred by the statute of limitations.

² For purposes of the Personal Income Tax Law, the statute of limitations may be tolled under certain circumstances during any period for which an individual taxpayer establishes a financial disability, which means that the taxpayer 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.)

³ As noted above, appellant's refund was intercepted by the Orange County Superior Court.

HOLDING

Appellant’s claim for refund of \$2,723.82 is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund of \$2,723.82 is sustained.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 11/20/2024