

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. EISAN) OTA Case No. 230713817
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OPINION

Representing the Parties:

For Appellant: Richard Burrill, CPA
For Respondent: Nancy E. Parker, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Eisan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,735.47 for the 2004 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file a 2004 California income tax return.
2. FTB became aware that appellant may have a filing requirement based on appellant’s state bar license and miscellaneous income reported on federal Form-1099.
3. On February 21, 2006, FTB issued appellant a Demand for Tax Return (Demand) that requested appellant file a return, provide evidence that he already filed a return, or explain why appellant did not have a filing requirement. Appellant did not respond to the Demand.
4. On May 22, 2006, FTB issued appellant a Notice of Proposed Assessment (NPA) that estimated appellant’s income and proposed to assess tax, a late filing penalty, a notice and demand (demand) penalty, a filing enforcement fee, and applicable interest.

- Appellant did not respond by the July 21, 2006 deadline; therefore, the NPA became final and payable.
5. On September 29, 2017, FTB issued an Earnings Withholding Order for Taxes (EWOT) to appellant's employer to collect delinquent tax debt related to multiple years including the 2004 tax year. Appellant negotiated a reduction of the withholding amount and FTB later issued a modified EWOT to adjust the per pay period amount.
 6. FTB collected payments from appellant and credited the payments to the outstanding balance for the 2004 tax year until the balance was satisfied on November 29, 2021.
 7. On March 15, 2023, appellant filed a 2004 California Resident Income Tax Return, with a married filing separately status, reporting total tax of \$1,415, estimated tax and other payments of \$4,000, and an overpayment of \$2,585, which appellant requested to be refunded.
 8. FTB accepted the 2004 return and treated it as a claim for refund. FTB corrected the estimated and other payments to zero, credited the payments it collected from appellant, and reduced the demand penalty and the late filing penalty to \$353.75 each. FTB calculated an overpayment of \$14,735.47. On April 17, 2023, FTB denied the claim for refund due to the expiration of the statute of limitations.
 9. This timely appeal followed.

DISCUSSION

Generally, no credit or refund shall be allowed or made 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 last date prescribed 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 in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

It is undisputed that the March 15, 2023 claim for refund was filed outside of the statute of limitations. Appellant's representative claims responsibility for filing the claim for refund past the one-year statute of limitations from the date the last payment was received. Appellant's representative explains that he believed appellant had two years from the date of overpayment to file the claim for refund and that he had difficulty ascertaining which tax years were being

credited with the wage garnishment payments.¹ On appeal, appellant provides a detailed explanation of the personal circumstances and difficulties experienced by both appellant and his representative and requests that the statute of limitations be waived for the 2004 tax year only.

While OTA is sympathetic to the difficulties that appellant describes, OTA lacks the authority to grant appellant's untimely claim for refund. The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) The law does not provide an equitable or reasonable cause exception to the statute of limitations to file a claim for refund. (*Ibid.*) Except in very limited situations which are not shown here,² a taxpayer's untimely filing of a claim for refund for any reason bars a refund. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Therefore, appellant's claim for refund for the 2004 tax year is barred by the statute of limitations.

¹ On appeal, FTB provides an account summary detailing each credit to appellant's 2004 tax year. The last payment credited to the 2004 tax year was on November 29, 2021.

² For example, R&TC section 19316 suspends the running of the statute of limitations during any period where 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. FTB provided appellant a copy of FTB 1564, Financially Disabled – Suspension of the Statute of Limitations, and requested that appellant provide medical evidence of any impairment during the statute of limitations period to demonstrate financial disability. However, appellant failed to provide a completed FTB 1564.

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.

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Erica Parker
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Erica Parker
Hearing Officer

We concur:

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 12/17/2024