

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

E. LEBRUN) OTA Case No. 230112506
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)**OPINION**

Representing the Parties:

For Appellant:

Guy V. Coulombe, EA

For Respondent:

Noel Garcia-Rosenblum, Attorney
Jaclyn Zumaeta, Assistant Chief Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. LeBrun (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$3,542.05 for the 2008 tax year; \$3,120.70 for the 2009 tax year; \$3,532.32 for the 2011 tax year; \$1,534.22 for the 2012 tax year; \$3,999.87 for the 2013 tax year; \$782.01 for the 2016 tax year; and \$1,123.25 for the 2017 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Lauren Katagihara, Eddy Y.H. Lam, and Richard Tay held an oral hearing for this matter in Cerritos, California, on March 13, 2024. At the conclusion of the hearing, OTA closed the record and submitted this matter for an opinion.

ISSUE

Whether appellant is entitled to refunds for the 2008, 2009, 2011, 2012, 2013, 2016, and 2017 tax years (the tax years at issue).

FACTUAL FINDINGS

1. Appellant did not file timely California income tax returns for the tax years at issue.
2. Since FTB did not receive appellant's tax returns for the tax years at issue, FTB estimated appellant's income and issued a Notice of Proposed Assessment (NPA) on

April 12, 2010, for the 2008 tax year; March 21, 2011, for the 2009 tax year; March 25, 2013, for the 2011 tax year; March 17, 2014, for the 2012 tax year; June 22, 2015, for the 2013 tax year; July 2, 2018, for the 2016 tax year; and November 27, 2019, for the 2017 tax year. Appellant did not respond to any of the NPAs, and each one became final assessments.

3. FTB received payments to satisfy appellant's balances due for the tax years at issue.¹
4. On November 9, 2022, appellant filed California income tax returns for all the tax years at issue. FTB accepted and processed all the returns.
5. Appellant reported overpayments on her returns for the tax years at issue, and so, FTB treated them as claims for refund.
6. FTB issued letters for each tax year at issue denying appellant's claims for refund.²
7. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19306 provides the last day to file a claim for refund is the later of: (1) four years from the date the return was filed, if filed by the extended due date; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. It is undisputed appellant did not file claims for refund for the tax years at issue before the expiration of the statute of limitations pursuant to R&TC section 19306. Additionally, at the oral hearing, appellant's representative clarified appellant is not arguing the statute of limitations should be tolled for financial disability or any other reason. Rather, appellant argues she is entitled to a refund of overpayments (which appellant's representative refers to as "excess garnishments") for the tax years at issue because she is being "double taxed" and because she needs the refunds to pay other outstanding debts.

OTA finds no legal authority to allow a refund in this appeal. Appellant's failure to file timely claims for refund for the tax years at issue bars recovery of such overpayments. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Although the parties do not dispute appellant made

¹ The record shows FTB initiated collection action for the 2011, 2012, 2013 and 2017 tax years. The record is not clear how FTB enforced its assessment for the 2008, 2009 and 2016 tax years; however, it is undisputed FTB received payments to satisfy appellant's balance due.

² FTB issued letters dated December 14, 2022, for the 2008 and 2009 tax years; December 15, 2022, for the 2011, 2013, and 2016 tax years; December 19, 2022, for the 2012 tax year; and November 28, 2022, for the 2017 tax year.

overpayments, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Indeed, a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Thus, appellant's argument she is being double taxed does not establish appellant's right to a refund for the tax years at issue.

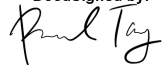
Appellant also requests a refund based on her need to pay other debts.³ Appellant fails to cite legal authority that would persuade OTA to allow a refund for such a reason, and OTA also finds no legal authority to grant a refund under these circumstances. OTA acknowledges the difficulty of appellant's situation but must uphold a fixed deadline such as this despite its occasional harshness. (*Appeal of Benemi Partners, L.P., supra.*)

HOLDING

Appellant has not shown she timely filed her claim for refund for the tax years at issue.

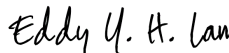
DISPOSITION

FTB's action is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

F595B34010D8470...

Lauren Katagihara
Administrative Law Judge

Date Issued: 5/28/2024

³ Notably, appellant explicitly does not argue the statute of limitations should be tolled for financial disability pursuant to R&TC section 19316.