

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240115120
O. SCHUMACHER)	
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)	

OPINION

Representing the Parties:

For Appellant:	O. Schumacher
For Respondent:	AnaMarija Antic-Jezildzic, Program Specialist II

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Schumacher (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$6,091.57 for the 2017 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. FTB received information indicating that appellant made income requiring her to file a return for the 2017 tax year. FTB issued appellant a Demand for Tax Return, requesting that appellant file a return or explain why no return was required to be filed. FTB did not receive a response and, as a result, FTB issued a Notice of Proposed Assessment (NPA), which proposed an assessment of tax, penalties, a filing enforcement fee, and interest.
2. The NPA became final and FTB began collection action.
3. Appellant's payments are as follows: (1) \$1,639.02 on August 20, 2021; (2) \$4,500 on February 16, 2022; (3) \$5,508 on April 12, 2023; (4) \$454.02 on July 3, 2023;

- (5) \$463.63 on October 2, 2023; (6) \$463.63 on November 6, 2023; (7) \$463.63 on December 4, 2023; (8) \$29.04 on January 20, 2023; and (9) \$463.63 on January 2, 2024.
4. On December 5, 2023, appellant filed a 2017 California tax return. FTB accepted the return and revised the total tax to zero and abated the penalties and fee.
 5. FTB treated the return as a claim for refund and issued appellant a refund of \$7,381.98. FTB denied the remaining claim for refund of \$6,091.57 due to the expiration of the statute of limitations.¹
 6. This timely appeal followed.
 7. On appeal, FTB concedes that the payment of \$463.54 on January 2, 2024, should be refunded to appellant on completion of the appeal.

DISCUSSION

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 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).) In an action for refund, taxpayers have the burden of proof to show that a refund is warranted and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances.² (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of section 19306 is explicit and must be strictly construed, without exception. (*Ibid.*)

Appellant untimely filed her return (treated as her claim for refund) on December 5, 2023. The first four-year statute of limitations period is not applicable because appellant did not timely file pursuant to an extension of time to file. Appellant's claim for refund is barred under the second four-year statute of limitations because the due date for filing a claim for refund was April 15, 2021, which is four years from the original filing due date.

¹ The remaining amount consists of appellant's payments of \$1,639.02 on August 20, 2021, and \$4,500 on February 16, 2022, less fees of \$23.81 and \$23.64.

² The time for filing a claim for refund may be extended if an individual taxpayer is "financially disabled," meaning he or she 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(b); *Appeal of Estate of Gillespie, supra.*) Appellant does not provide any argument or evidence to show she was financially disabled.

As to the one-year statute of limitations, FTB refunded \$7,381.98 for payments appellant made within one year of the filing of the claim for refund. On appeal, FTB agrees to refund a payment of \$463.63 made on January 2, 2024. Therefore, FTB refunded, or has agreed to refund, all payments made within one year of the filing of the claim for refund. The remaining payments totaling \$6,091.57 were made prior to December 5, 2022, which is one year from the filing of the claim for refund on December 5, 2023. As a result, those payments are barred under the one-year statute of limitations.

Appellant argues that she did not have income to report for 2017 and had no filing requirement, so the statute of limitations does not apply, and she is entitled to a full refund. However, if a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra.*) 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 remaining amount is barred by the statute of limitations.

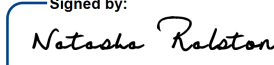
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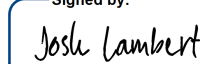
Appellant's claim for refund is barred by the statute of limitations.

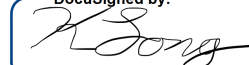
DISPOSITION

FTB's action is modified, as conceded on appeal, to allow appellant's claim for refund with respect to the payment of \$463.54 on January 2, 2024. Otherwise, FTB's action is sustained.

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

Signed by:

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Josh Lambert
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 1/28/2025