

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230713751
B. SIBOLE AND)	
A. SIBOLE)	
)	
)	

OPINION

Representing the Parties:

For Appellants:	B. Sibole
	A. Sibole

For Respondent:	Paige Chang, Attorney
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For Office of Tax Appeals:	Louis Ambrose, Attorney
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K. LONG Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Sibole and A. Sibole (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$12,880.81 for the 2017 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellants did not file a timely California income tax return for the 2017 tax year.
2. On April 26, 2019, FTB issued a Demand for Tax Return (Demand) to appellant B. Sibole stating that it received information that appellant B. Sibole may have been required to file a California income tax return. FTB demanded that appellant B. Sibole file a return or explain why no return was required. Appellant B. Sibole failed to respond to the Demand.
3. FTB issued a Notice of Proposed Assessment (NPA) dated September 27, 2019, which estimated appellant B. Sibole's income for 2017 based on information from four payors.

- The NPA proposed a net tax liability of \$7,414, a late filing penalty of \$1,853.50, a demand penalty of \$1,853.50, and a filing enforcement cost recovery fee of \$93, plus applicable interest. Appellant B. Sibole did not respond to the NPA, and it became final.
4. On April 22, 2021, FTB issued a Collection Status Notice to appellant B. Sibole explaining that FTB would begin collection action on the 2017 tax year balance. Thereafter, FTB received payments of \$7,519.96 on June 25, 2021, \$2,957.68 on August 13, 2021, \$1,969.60 on September 28, 2021, and \$433.57 on March 1, 2022.
 5. On March 13, 2023, appellants filed an untimely 2017 California return. After applying exemption credits of \$1,640, appellants reported zero total tax. FTB treated appellants' return as a claim for refund.
 6. On April 11, 2023, FTB denied appellants' claim for refund in the amount of \$12,880.81 based on the expiration of the statute of limitations for filing a claim for refund.
 7. This timely appeal followed.
 8. During this appeal, FTB conceded that appellants' claim for refund was timely with respect to a March 1, 2022 payment of \$433.57. FTB's concession is because, following a series of winter storms, the IRS postponed the deadline for taxpayers to make time sensitive actions to November 16, 2023, to which California conforms.¹ As such, FTB now states that it will refund or credit appellants' account in the amount of \$433.57.

DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) There is no reasonable cause or equitable basis to suspend the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*).) This is true even when it is later shown that the tax was not owed in the first place.

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html>.

(*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Because appellants did not file a timely return, the applicable statute of limitations in this appeal is the later of four years from the last day prescribed for filing the tax return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2017 tax year, the four-year statute of limitations expired on April 15, 2022, four years from the due date of the tax return of April 15, 2018. (R&TC, § 19306(a), 18566.) Appellants' 2017 tax return (treated as appellants' claim for refund) was filed on March 13, 2023, almost 11 months after the expiration of the four-year statute of limitations. Therefore, FTB is barred from refunding or crediting any overpayment for the 2017 tax year under that provision.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) The payments for the 2017 tax year were made during the period June 25, 2021, through March 1, 2022. As discussed above, FTB now concedes that appellants' claim for refund was timely with respect to the March 1, 2022 payment. However, the one-year statute of limitations for the remaining payments expired on June 25, 2022, August 13, 2022, and September 28, 2022 respectively. As such, the one-year statute of limitations bars a refund or credit of the remaining payments.

On appeal, appellants argue that they are entitled to a refund for the 2017 tax year. As an explanation, appellants argue that they were unable to obtain tax documents due to the COVID-19 pandemic in 2020.² Appellants assert that they filed a return as soon as they could obtain the required documents and assistance from their tax preparer. Appellants also contend that their tax preparer filed a return electronically on their behalf and then appellants mailed a copy of the return several months later. Here, OTA notes that appellants' inability to obtain tax documentation in 2020 does not explain their inability to file a return by the due date of April 15, 2018. As to when appellants filed a return, OTA finds no evidence to show that appellants timely filed a return electronically, and FTB records reflect that appellants' return was received on March 13, 2023, well after the due date.

² In response to the COVID-19 pandemic, FTB issued notices postponing the expiration of statute of limitations for the 2016 tax year and indicating that it would consider a refund claim timely if the statute of limitations expired on April 15, 2021, and the refund claim was filed prior to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>; <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.) However, as appellants' refund claim is for the 2017 tax year, and was filed after May 17, 2021, the COVID-19 postponement does not apply in this case.


Nevertheless, as noted above, there is no reasonable cause or equitable basis to suspend the statute of limitations. (*Benemi, supra.*) 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. (*Benemi, supra.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*, citing *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) As such, even if appellant did not have a tax liability, the claim for refund is barred by the statute of limitations.

HOLDING

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

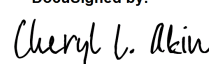
DISPOSITION

Subject to FTB's concession to allow a \$433.57 refund/credit, FTB's denial of the claim for refund is otherwise sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Huy "Mike" Le
Administrative Law Judge

Date Issued: 4/9/2025