

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. HUBBELL) OTA Case No. 240415944
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OPINION

Representing the Parties:

For Appellant: D. Hubbell
For Respondent: Rosemary Villasenor, Senior Legal Analyst

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Hubbell (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,948.72 for the 2017 tax year.¹

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 the statute of limitations bars appellant’s claim for refund for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2017 tax year.
2. FTB received wage information indicating that appellant had sufficient income during the 2017 tax year to require the filing of a tax return for that year, so on May 7, 2019, FTB issued a Request for Tax Return to appellant.
3. Appellant did not file her tax return or otherwise respond to the Request for Tax Return.

¹ Appellant’s Request for Appeal lists the dollar amount of her appeal as “5948.72 plus 7000.0,” which she alleges represents the amount of her refund claim and the amount garnished from her wages. As discussed below, the total of appellant’s payments for the 2017 tax year was \$7,209.72, which exceeded appellant’s liability by \$5,948.72. Therefore, the correct amount at issue in this appeal is \$5,948.72, not \$12,948.72.

4. FTB therefore issued a Notice of Proposed Assessment (NPA) to appellant proposing to assess tax (based on the wage income information it received), a late filing penalty, and interest. Appellant continued to be nonresponsive, so the NPA became final.
5. In March 2020, FTB issued to appellant a State Income Tax Balance Due Notice followed by an Income Tax Due Notice in July 2020, and a Final Notice Before Levy and Lien in September 2020 (collectively, Notices). All three Notices demanded payment and warned appellant that failure to remit payment could result in FTB taking collection action against her. The Final Notice Before Levy and Lien also warned appellant that FTB could impose a collection cost recovery fee if payment was not made in full.
6. Appellant did not remit payment, resulting in FTB's imposition of a \$316 collection cost recovery fee.²
7. Between December 8, 2020, and January 4, 2022, FTB collected \$4,835.72 towards the remaining assessed tax, late filing penalty, collection cost recovery fee, and interest via wage garnishment. Appellant's withholdings of \$2,194 from the 2017 tax year were also credited towards her tax balance. Therefore, appellant's payments for the 2017 tax year totaled \$7,029.72.
8. On March 27, 2024, appellant filed her return for the 2017 tax year, requesting a refund of \$4,389.98.
9. FTB processed appellant's return and determined that appellant's tax liability for the 2017 tax year was \$765, which was less than the amount appellant reported. FTB also abated the late filing penalty. Therefore, FTB determined appellant overpaid her taxes by \$5,948.72 (\$7,029.72 - \$765 - \$316). However, FTB denied appellant's claim for refund because it was filed outside of the statute of limitations period for making a refund claim.
10. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306(a). 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

² Appellant does not specifically dispute the collection cost recovery fee, so the appropriateness of its imposition will not be discussed.

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.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., supra.*) 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.*) The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Ibid.*)

Here, because appellant did not file her 2017 tax return pursuant to a valid extension of time, appellant cannot avail herself of the first four-year statute of limitations period under R&TC section 19306(a). For the claim for refund to be timely under the second four-year statute of limitations period, appellant was required to file her claim by April 15, 2022 (i.e., within four years of April 15, 2018, when her 2017 tax return was originally due). (R&TC, §§ 19306(a), 18566.) However, appellant filed her tax return, which FTB treated as a claim for refund, on March 27, 2024, which was almost two years after the expiration of the deadline. Therefore, appellant's claim for refund is time-barred under the applicable four-year statute of limitations period.

Alternatively, a claim for refund is timely if it is filed within one year from the date of overpayment. (R&TC, § 19306(a).) A portion of appellant's overpayment was made through her withholdings, which is deemed paid on the original due date of the return. (R&TC, § 19002(c)(1).) Because appellant's 2017 tax return was originally due April 15, 2018, her withholdings are deemed to have been paid on that date. Consequently, to be timely as to the withholdings, appellant's claim for refund needed to be filed by April 15, 2019. With respect to appellant's garnished wages, the most recent credit made to appellant's account for the 2017 tax year was on January 4, 2022. As such, the latest appellant's claim for a refund would have been timely was January 4, 2023. (R&TC, § 19306(a).) Because appellant did not file her claim for refund until March 27, 2024, the one-year statute of limitations precludes a refund of both the withholdings and the garnished wages.

Appellant's only argument relating to the timeliness of her claim is her assertion that she timely filed her 2017 tax return. However, appellant has not provided any evidence, such as a registered or certified mail receipt, indicating that her return was timely filed. (See *Appeal of Fisher*, 2022-OTA-337P [a taxpayer attempting to prove that a paper return was timely mailed would have to show evidence, such as a registered or certified mail receipt, that the return was

timely mailed].) Consequently, appellant has not met her burden of showing that her claim for refund was timely filed.

Appellant's main contention on appeal is that FTB's wage garnishment was improper. Specifically, appellant asserts that she was not informed until 2022 that FTB did not receive her return, and that she had an agreement to make monthly payments to FTB, but FTB instead garnished her wages without notice. OTA, however, does not have jurisdiction to determine whether FTB's collection actions were proper. (See, e.g., *Appeal of Robinson*, 2018-OTA-059P [OTA's function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability].) OTA does note that FTB's Request for Tax Return was issued to appellant on May 7, 2019, and that the three Notices issued to appellant between March and September 2020, warned appellant that failure to remit payment could result in FTB taking collection action against her. Additionally, appellant has not provided any evidence of a payment agreement with FTB for the 2017 tax year.

Appellant also argues that the wage garnishments caused her financial distress and rendered her unable to hire a tax professional to assist with the filing of her return. Although OTA is sympathetic to appellant's situation, OTA lacks the authority to grant appellant's untimely claim for refund. The law does not provide for an equitable or reasonable cause exception to the statute of limitations for making a refund claim. (*Appeal of Benemi Partners, L.P., supra.*) This means that except in very limited situations which are not present here,³ a taxpayer's untimely filing of a refund claim for any reason bars a refund. (*Ibid.*) This is true even if the tax was not owed in the first place or was erroneously, illegally or wrongfully collected. (*Ibid.*) Consequently, appellant's claim for refund is time-barred.


³ For instance, 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.

HOLDING

The statute of limitations bars appellant's claim for refund for the 2017 tax year.


DISPOSITION

FTB's action is sustained.


Signed by:


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Lauren Katagihara
Administrative Law Judge

We concur:

Signed by:


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Seth Elsom
Hearing Officer

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 3/26/2025