

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
M. FREEDMAN AND)
J. MONTAG-FREEDMAN)
)
)
)

OTA Case No. 230814077

OPINION

Representing the Parties:

For Appellants:	Michael Grossman, CPA Allen Perl, CPA
For Respondent:	Andrea Watkins, Attorney Cynthia Kent, Supervising Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Freedman and J. Montag-Freedman (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund for the 2017 tax year.

Office of Tax Appeals Panel Members Sara A. Hosey, Seth Elsom, and Erica Parker held a virtual oral hearing for this matter on May 22, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUE

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

FACTUAL FINDINGS

1. On October 12, 2018, appellants timely filed their 2017 California Nonresident or Part-Year Resident Income Tax Return (return) within the automatic extension period. Appellants reported \$11,073 of 2017 estimated tax payments (originating from an estimated payment transferred from the 2016 tax year), resulting in an overpayment in that amount, which they requested to be applied to their 2018 estimated tax.
2. FTB accepted the return as filed and applied the overpayment to appellants' 2018 estimated tax.

3. On June 15, 2023, appellants filed a 2017 amended return, reporting \$8,178 of withholding, which they requested be refunded to them. The withholding originated from tax withheld by a pass-through entity, Bayberry Media Holding, LLC (Bayberry), of which M. Freedman, appellant-husband, was the sole owner.
4. FTB denied the refund request, determining that the overpayment was barred by the statute of limitations.
5. Appellants filed this timely 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 original 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).) A taxpayer bears the burden of proving entitlement to a refund claim and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) R&TC section 19002(c) specifically provides that payments from withholding, estimated tax and refundable credits are effective as of the original due date of the return.

The law does not provide for the waiver of the statute of limitations based on reasonable cause or equity. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first instance. (*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.*)

Appellants filed their 2017 tax return within the automatic extension period on October 12, 2018. Appellants had four years from that date, or until October 12, 2022, to make a timely claim for refund. However, appellants filed their 2017 amended tax return, which is treated as their claim for refund, on June 15, 2023, which was eight months after the statute of limitations expired. Appellants' claim for refund is therefore barred by the four-year statute of limitations.

R&TC section 19002(c) specifically provides that payments from withholdings are effective as of the original due date of the return. Other than the estimated payment transferred from the 2016 tax year, which was subsequently transferred to appellants' 2018 tax year, appellants' only 2017 tax year payment is the \$8,178 withholding claimed on their amended

return. Therefore, appellants had one year from the effective date of the withholding, which was April 15, 2018, to make a timely claim for refund. Appellants filed their 2017 claim for refund on June 15, 2023, well after the one-year statute of limitations had expired. Therefore, appellants' claim for refund is barred by the one-year statute of limitations.

Appellants argue that the statute of limitations should not bar their claim for refund because Bayberry consistently reported the withholding on its 2017 through 2021 returns. Appellants argue they only became aware of their requirement to individually report and claim Bayberry's withholding credit after appellant-husband reported it as an overpayment credit to Bayberry's 2021 return and FTB subsequently issued a notice November 3, 2022, to deny the overpayment credit.

Withholding credits can only be claimed by a pass-through entity to the extent of its entity level tax in the taxable year of the withholding. (Cal. Code Regs., tit. 18, section 19002(b).)¹ If claimed, any residual amount of tax withheld from payments to pass-through entities must be passed through to the entity's owners, who then claim the withholding credit on their respective tax returns. Regulation section 19002(b) states:

Payments to Pass-Through Entities. Tax withheld from payments to pass-through entities must be passed through to the entity's owners and reported on FTB Form 592-B according to their ownership interest in the pass-through entity, except that owners of pass-through entities may authorize the pass-through entity to use some or all of the withholding credit to satisfy the entity-level tax of the pass-through entity due for the taxable year.

Therefore, as a pass-through entity, the withholding credit of \$8,178 could only have been applied to Bayberry's 2017 annual \$800 tax. The remainder of the withholding credit could only have been passed through to Bayberry's sole owner, appellant-husband. Unfortunately, as discussed above, appellants' misunderstanding of the law regarding pass-through entity withholding is not reason to toll the statute of limitations. There is no reasonable cause exception and appellants' failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents appellants from doing so at a later date. (*Appeal of Estate of Gillespie, supra.*)

As for appellants request for equitable estoppel, as a general matter, the statute of limitation for claims for refund is not subject to equitable tolling or other doctrines of equity. (*Appeal of Benemi Partners. L.P., supra*, citing *U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations]; *Danoff v. U.S.* (C.D.Cal. 2004)

¹ This is also explained in FTB's 568 booklet and on FTB's Form 592-B instructions, though appellants testified that the instructions were not used in the preparation of the returns.

324 F.Supp.2d 1086, 1099, affd. (9th Cir. 2005) 135 Fed.Appx. 950 [“courts uniformly have held that equitable principles, including the doctrine of equitable estoppel, cannot toll statutes of limitation in tax refund suits”].) Furthermore, it appears from the call logs provided by the parties that the statute of limitations period had already expired prior to appellants’ phone calls with FTB. Therefore, appellants’ claim for refund is barred by the statute of limitations.

HOLDING

Appellants’ 2017 claim for refund is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained.

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Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

Date Issued: 8/19/2025