

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
MD TOX LABORATORY INC.) OTA Case No. 220510483
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OPINION

Representing the Parties:

For Appellant: David White, President

For Respondent: Maria Brosterhous, Attorney Supervisor

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, MD TOX Laboratory Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$50,809 for the 2015 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).

ISSUE¹

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. On March 15, 2016, FTB received an extension payment of \$35,360.
2. Appellant did not timely file a 2015 California Corporation Franchise or Income Tax Return (return).

¹ Appellant requests attorney fees and costs—presumably under R&TC section 21013, which applies to appeals before OTA—because, in its view, FTB took a position that is “unreasonable” or “not substantially justified.” (R&TC, § 21013(a)(1)(B) & (b)(1); Cal. Code Regs., tit. 18, § 30702; *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) OTA, however, will not entertain such a request at this time because the appeal is not yet final, and appellant’s appeal must ultimately be granted. (Cal. Code Regs., tit. 18, § 30702 [an appellant whose appeal was not granted does not have an eligible claim].)

3. For the 2015 tax year, FTB issued a Demand for Tax Return to appellant because appellant is a registered corporation with the California Secretary of State, and FTB received information that appellant had received income from four entities.
4. On February 26, 2018, FTB received appellant's untimely 2015 return, which reported total tax of \$52,308. After the extension payment of \$35,360 was applied, the amount of tax due was \$16,948. After including an estimated tax penalty, appellant reported a total amount due of \$17,968.
5. On October 1, 2018, appellant paid \$38,081.98, which included penalties and interest.²
6. On October 14, 2020, FTB received appellant's first amended return in which it claimed a refund due of \$50,809. FTB denied the claim for refund because it was received after the expiration of the statute of limitations.
7. On April 22, 2022, FTB received appellant's second amended return in which it claimed a refund. FTB denied the claim for refund on the same grounds as the first amended return.
8. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides 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 due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant did not file a return during the automatic extension period, and thus this period is inapplicable. Regarding the second period, appellant filed an untimely 2015 amended return on October 14, 2020, in which it claimed a refund due. The original due date for the 2015 return was March 15, 2016. (R&TC, § 18601(a) [effective January 1, 2001, to December 31, 2016].) Therefore, the four-year statute of limitations from the original due date of the return expired on March 15, 2020, which FTB postponed to July 15, 2020, due to the

² More specifically, this included a demand penalty of \$13,077, a late-filing penalty of \$4,237, and interest of \$2,715.21.

COVID-19 state of emergency.³ With respect to the third period, the one year period from the date of overpayment, appellant paid an extension payment on March 15, 2016, and a bill payment on October 1, 2018. Thus, the one-year period from overpayment for each of the payments was March 15, 2017, or October 1, 2019, respectively. Appellant's claim for refund was received on October 14, 2020, and again on April 22, 2022. In both instances, the claim for refund was well past the one-year period for each payment.

Due to complications with COVID-19 and an IRS audit, appellant argues that its circumstances fall within a reasonable cause exception because it claims to have exercised ordinary business care and prudence. Appellant, however, provides no relevant legal authority to support its argument. While there are certain limited statutory exceptions to the statute of limitations,⁴ which are inapplicable here, there is no reasonable cause or equitable basis for tolling the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)⁵ As explained above, appellant's claim for refund was filed outside of the statute of limitations periods. Accordingly, OTA finds appellant's claim for refund is time-barred.

³ See FTB Notice 2020-02 available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.

⁴ See e.g., R&TC, §§ 19311, 19312, 18571.

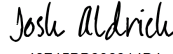
⁵ *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P, citing *U.S. v. Brockamp* (1997) 519 U.S. 347, 351 [no intent to apply equitable tolling in a federal tax statute of limitations]. Federal courts have uniformly held that the holding in *U.S. v. Brockamp* also extends to the doctrine of equitable estoppel. (*Danoff v. U.S.* (C.D.Cal. 2004) 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"]; see also *Dickow v. U.S.* (1st Cir. 2011) 654 F.3d 144, 151 ["[A taxpayer's] equitable estoppel claim fails because [IRC section] 6511 is not subject to equitable exceptions under the Supreme Court's decision in *Brockamp*"]; *Computervision Corp. v. U.S.* (Fed.Cir. 2006) 445 F.3d 1355, 1368 ["actions of regulatory authorities cannot either extend the statute of limitations under [IRC] section 6511 by equitable tolling or create an estoppel against the government".])

HOLDING


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


DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Josh Aldrich
Administrative Law Judge

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

DocuSigned by:

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 9/16/2025