

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
S. MENDEZ AND) OTA Case No. 241017739
M. LUGO RAMIREZ)
_____)

OPINION

Representing the Parties:

For Appellants: S. Mendez and M. Lugo Ramirez

For Respondent: John Ly, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Mendez and M. Lugo Ramirez (appellants) appeal actions by the Franchise Tax Board (respondent) denying appellants' claims for refund of \$16,714.06 for the 2006 tax year and \$2,159.19 for the 2012 tax year.

Appellants 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 appellants' claims for refund for the 2006 and 2012 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

2006 Tax Year

1. Appellants did not file a timely 2006 California Resident Income Tax Return.
2. On May 13, 2009, respondent sent appellant S. Mendez a Demand For Tax Return (Demand), stating that respondent received information indicating that he held an active professional/business license, sales permit or employees worked for him and the average income for his occupation was sufficient to have a filing requirement. Appellant S. Mendez did not respond to the Demand.

3. On October 13, 2009, respondent sent appellant S. Mendez a Notice of Proposed Assessment (NPA) proposing to assess tax of \$6,104, and imposing a late filing penalty of \$1,526, a demand penalty of \$1,526, and a filing enforcement fee of \$113, plus applicable interest, for a total balance due of \$10,689.04. Appellant S. Mendez did not protest the NPA and it became due and payable.
4. On August 27, 2014, respondent sent appellant S. Mendez an Income Tax Due Notice requesting payment for the total balance due for the 2006 tax year of \$12,658.41, and informing him that respondent may initiate collection activity if he did not pay the balance due within 30 days of the date of the notice.
5. Respondent subsequently initiated collection activity against appellant S. Mendez, receiving payments totaling \$16,714.06 between June 24, 2020, and July 15, 2023. Respondent also received a final payment of \$139.10 on July 27, 2023.
6. On July 25, 2024, appellants filed a joint 2006 California Resident Income Tax Return reporting total tax of \$0. Respondent accepted appellants' return as filed, recalculated a late filing penalty, demand penalty, and filing enforcement fee of \$0, and treated the return as a claim for refund. Respondent allowed appellants' July 27, 2023 payment of \$139.10 as a timely claim for refund under the one-year statute of limitations and subsequently applied it against appellants' balance due for the 2010 tax year.¹
7. On August 19, 2024, respondent sent appellants a Statute of Limitations letter denying their claim for refund of \$16,714.06 (\$16,853.16 payments minus \$139.10 claim for refund allowed) for the 2006 tax year.
8. This timely appeal followed.

2012 Tax Year

9. Appellants did not file a timely 2012 California Resident Income Tax Return.
10. On January 23, 2014, respondent sent appellant S. Mendez a Demand, stating that respondent received information indicating that he held an active professional/business license, sales permit or employees worked for him and the average income for his occupation was sufficient to have a filing requirement. Appellant S. Mendez did not respond to the Demand.
11. On April 14, 2014, respondent sent appellant S. Mendez an NPA proposing to assess tax of \$7,029, and imposing a late filing penalty of \$1,757.25, a demand penalty of

¹ Respondent applied appellants' July 27, 2023 payment plus accrued interest, for a total transfer to the 2010 tax year of \$139.65 (claim for refund allowed of \$139.10 plus \$0.55 accrued interest).

- \$1,757.25, and a filing enforcement fee of \$78, plus applicable interest, for a total balance due of \$10,888.33. Appellant S. Mendez did not protest the NPA and it became due and payable.
12. On August 27, 2014, respondent sent appellant S. Mendez an Income Tax Due Notice requesting payment for the total balance due for the 2012 tax year of \$11,008.93, and informing him that respondent may initiate collection activity if he did not pay the balance due within 30 days of the date of the notice.
 13. Respondent subsequently initiated collection activity against appellant S. Mendez and received a payment of \$2,203 on May 20, 2022. Respondent applied this payment against fees related to the collection activity and credited appellants' account with the remaining balance of \$2,159.19 for the 2012 tax year.²
 14. On July 25, 2024, appellants filed a 2012 California Resident Income Tax Return, reporting total tax of \$0. Respondent accepted appellants' return as filed, recalculated a late filing penalty, demand penalty, and filing enforcement fee of \$0, and treated the return as a claim for refund.
 15. On August 15, 2024, respondent sent appellants a Statute of Limitations letter denying their claim for refund of \$2,159.19 for the 2012 tax year.
 16. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent 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 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).) 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.*, (Benemi) 2020-OTA-144P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of the statute of limitations is explicit and must be strictly construed. (*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

² Respondent's account detail for appellants reports a \$2,159.19 balance for the 2012 tax year, which is the sum of appellants' May 20, 2022 payment of \$2,203, minus a Treasury Offset Program fee of \$23.81 and a county lien fee of \$20.

erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

2006 Tax Year

Appellants filed their 2006 return, treated by respondent as a claim for refund, on July 25, 2024, after the expiration of the extension period on October 15, 2007. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.) Thus, the first limitations period does not apply. The original due date for filing the 2006 return was April 15, 2007, and the four-year statute of limitations expired four years later on April 15, 2011. (R&TC, §§ 18566, 19306(a).) Therefore, appellants' claim for refund is untimely under the second limitations period. For the foregoing reasons, appellants' claim for refund is barred under the four-year statute of limitations.

Under the one-year statute of limitations, the deadline for appellants to file a claim for refund is one year from the date of overpayment. Appellants filed their 2006 return, treated by respondent as a claim for refund, on July 25, 2024. Therefore, appellants may claim a refund of any payments made within one year from the date of the claim for refund (i.e., between July 25, 2023, and July 25, 2024). Appellants made their last payment for the 2006 tax year of \$139.10 on July 27, 2023, within the one-year statute of limitations. Respondent allowed this claim and applied it against appellants' balance due for the 2010 tax year. Appellants made their remaining payments totaling \$16,714.06 more than one year before they filed their claim for refund,³ and thus appellants' claim for refund of these payments is barred under the one-year statute of limitations.

2012 Tax Year

Appellants filed their 2012 return, treated by respondent as a claim for refund, on July 25, 2024, after the expiration of the extension period on October 15, 2013. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.) Thus, the first limitations period does not apply. The original due date for filing the 2012 return was April 15, 2013, and the four-year statute of limitations expired four years later on April 15, 2017. (R&TC, §§ 18566, 19306(a).) Therefore, appellants' claim for refund is untimely under the second limitations period. For the foregoing reasons, appellants' claim for refund is barred under the four-year statute of limitations.

³ The latest of these payments was made on July 15, 2023.

Under the one-year statute of limitations, the deadline for appellants to file a claim for refund is one year from the date of overpayment. Appellants filed their 2012 return, treated by respondent as a claim for refund, on July 25, 2024. Appellants may claim a refund of any payments made within one year of the claim for refund (i.e., between July 25, 2023, and July 25, 2024.) Appellants made their sole payment for the 2012 tax year on May 20, 2022, more than one year prior to filing the claim for refund. Therefore, appellants' claim for refund of \$2,159.19 for the 2012 tax year is barred under the one-year statute of limitations.

Appellants' Argument on Appeal


On appeal, appellants only state that their tax returns have now been submitted, the payments were taken from payroll, they have no current debts with the state, and that they would like to claim the overpayments. However, as noted above, appellants' claims for refund are barred by the statute of limitations. Additionally, the language of the statute of limitations is explicit and must be strictly construed, and 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.*)

HOLDING


Appellants' claims for refund for the 2006 and 2012 tax years are barred by the statute of limitations.


DISPOSITION

Respondent's actions denying appellants' claims for refund are sustained.

Signed by:

C04CD432E3254ED
Seth Elsom
Hearing Officer

We concur:

Signed by:

47E45ABE89E34D0
Suzanne B. Brown
Administrative Law Judge

DocuSigned by:

6651E0AAC34B4F6
Erica Parker
Hearing Officer

Date Issued: 9/16/2025