Docusign Envelope ID: 58792424-3DAF-8CF8-807D-E6C75A4FB27A

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. MORIARTY AND** **T. MORIARTY (DEC'D)**	)	OTA Case No. 241117950

OPINION

Representing the Parties:

For Appellant: S. Moriarty

For Respondent: John Ly, Attorney

G. TURNER, , Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Moriarty (appellant)[1] appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $19,320.86 for the 2019 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).

ISSUE

Whether the statute of limitations bars appellant's claim for refund.

FACTUAL FINDINGS

1. On April 15, 2020, FTB received $19,314 of nonwage withholding payments and $3,805 of California income tax withholding payments.[2]
2. On May 7, 2020, appellant's spouse unexpectedly died.

[1] This appeal is by appellant only as appellant's spouse died suddenly just prior to the filing of their joint tax return.

[2] Withholding credits are deemed paid on April 15, 2020, for returns filed based on the calendar year. (R&TC, §§ 19002(c)(1), 18566.) Appellant explained on an amended tax return that the $19,314 of nonwage withholding payments were from the sale of real estate.

3. On May 19, 2020, appellant timely filed a joint California Resident Income Tax Return for the 2019 tax year.[3,] Appellant reported a $5,218 balance due because appellant reported total tax of $9,023 and only $3,805 of California income tax payments.
4. On June 4, 2020, FTB received a $5,128 payment.
5. On September 21, 2020, FTB issued appellant a State Income Tax Balance Due Notice informing appellant that there was a $96.73 balance due for the 2019 tax year. Because appellant did not pay $90 of the balance due reported on the tax return, FTB imposed a $5.85 late payment penalty, and $0.88 of interest accrued.[4]
6. On October 1, 2020, FTB received a $96.73 payment.
7. On February 6, 2024, FTB issued a letter to appellant and appellant's spouse to an address in Hawaii, informing them that they each may be entitled to claim an estimated $9,657 of nonwage withholding credits on the tax return for the 2019 tax year. On February 12, 2024, FTB issued a Notice of Unclaimed Nonwage Withholding Credits to appellant, individually, at an address in California similarly informing appellant of the credits and directing that appellant must file an amended tax return before the expiration of the statute of limitations to claim these credits.[5]
8. On June 7, 2024, appellant filed an amended California Resident Income Tax Return for the 2019 tax year, claiming $19,314 of nonwage withholding credits and a $19,314 refund.
9. FTB treated appellant's amended tax return as a claim for refund for $19,320.86,[6] and FTB denied appellant's claim for refund.
10. Thereafter, appellant timely filed this appeal.

[3] Appellant's return was timely filed because for the 2019 tax year, due to COVID-19, the individual filing and payment due dates were postponed to July 15, 2020. (*Appeal of Rougeau*, 2021-OTA-335P.)

[4] FTB later withdrew the $5.85 late payment penalty.

[5] The FTB letter amount of $9,657 represents one-half of the total non-wage withholding credits of $19,314, reflecting the potential community property interests for each.

[6] FTB calculated appellant's overpayment as $19,320.86 because appellant had $19,314 of nonwage withholding, $3,805 of other withholding, $5,224.73 of payments, a $9,023 tax liability, and because FTB wrote off $0.13.

DISCUSSION

No credit or refund shall be allowed unless the taxpayer files a claim for refund within the later of four years from the date the return was filed, if filed within the extension period under R&TC section 18567, four years from the last day prescribed for filing the return, determined without regard to any extension of time to file a tax return, or after one year from the date of the overpayment. (R&TC, § 19306(a).) Tax returns filed on a calendar year basis are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) However, FTB grants an automatic six-month extension to October 15th if tax returns are filed within this extension. (R&TC, §§ 18567(a)(1); Cal. Code Regs., tit. 18, § 18567.) The taxpayer has the burden of proof in establishing that the taxpayer timely filed a claim for refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Here, the four-year statute of limitations expired on May 19, 2024, because appellant filed a tax return within the extension period on May 19, 2020. However, appellant filed a claim for refund on June 7, 2024, after the four-year statute of limitations expired. The one-year statute of limitations for appellant's last payment of $96.73 expired on October 1, 2021, because FTB received this payment on October 1, 2020. However, appellant filed a claim for refund on June 7, 2024, after the one-year statute of limitations expired.

Appellant argues that he was delayed in receiving FTB's letter about the unclaimed withholding credits because FTB issued the letter to his Hawaiian address instead of his California address. Appellant also argues that he promptly contacted an accountant to file an amended tax return after receiving FTB's letter and the accountant informed appellant that the statute of limitations expired on July 15, 2024, because FTB postponed the filing deadline to July 15, 2020.

OTA sympathizes with appellant's situation. FTB's notice of a balance due on September 21, 2020, was clearly inaccurate and appellant's tax advisor may well have provided erroneous advice. However, there is no reasonable cause or equitable basis for suspending or tolling the statute of limitations. (*Appeal of Benemi Partners, L.P.*, *supra*; *Appeal of Meek* (06-SBE-001) 2006 WL 864344.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, *supra*.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars the taxpayer from later claiming a refund. (*Ibid*.)

In addition, FTB's state of emergency postponements does not change the original due date of a tax return. (*Appeal of Bannon*, 2023-OTA-096P.)[7] R&TC section 18572(b) grants FTB authority to grant state of emergency postpones for tax-related acts by adopting and modifying Internal Revenue Code (IRC) section 7508A.[8] Generally, affected taxpayers may perform certain tax-related acts until the last day of the postponement period if the due date for the tax-related act falls within the postponement period. (Treas. Reg. § 301.7508A-1(b)(2).)[9] However, a postponement does not change the due date of the tax return to the extent that other statutes rely on the due date of a tax return. (Treas. Reg. § 301.7508A-1(b)(4).)

Although FTB's postponed the filing date for purposes of R&TC section 18566, the postponement does not affect the due date of the return for purposes of R&TC section 19306. R&TC section 19306 provides that the four-year statute of limitations is the later of four years from the due date of the return, or four years from the date the taxpayer files the return if the return is filed within the extension period. R&TC section 19306 relies on the due date of the tax return to determine the last day to file a claim for refund. FTB's postponement did not change the original due date of the tax return for the 2019 tax year from April 15, 2020, to July 15, 2020, for the purposes of the four-year statute of limitations. Thus, appellant's claim for refund filed on June 7, 2024, beyond the four-year statute of limitations which expired on May 19, 2024, is untimely.

[7] In *Appeal of Bannon, supra*, OTA held that FTB's emergency postponement did not change the original or extended due date of a tax return when determining whether FTB properly imposed the late filing penalty.

[8] R&TC section 18572(b) modifies IRC section 7508A to provide that postponements apply to taxpayers affected by a state of emergency declared by the Governor of California, as opposed to a federally declared disaster.

[9] When applying the IRC, the Treasury Regulations shall apply to the extent that they do not conflict with the R&TC or the regulations issued by FTB. (R&TC, § 17024.5(d).)

HOLDING

The statute of limitations bars appellant's claim for refund.

DISPOSITION

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

Signed by:
Greg Turner
1B8F50433F1D4D5...
Greg Turner
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
32D48B0C49C849F...
Veronica I. Long
Administrative Law Judge

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Date Issued: 9/10/2026