

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011054  
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**MARIA SIMIONE** ) Date Issued: July 12, 2018  
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**OPINION**

Representing the Parties:

For Appellant: Lou Sabatella

For Respondent: Brian Werking, Tax Counsel

Office of Tax Appeals: William J. Stafford, Tax Counsel III

N. DANG, Administrative Law Judge: This appeal is made pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> from the action of the Franchise Tax Board (FTB or respondent) in denying Maria Simone’s (appellant’s) claim for refund of \$5,136 for the 2009 tax year.

Appellant waived her right to an oral hearing, and therefore, the matter is being decided based on the written record.

**ISSUE**

Was appellant’s claim for refund of \$5,136 for the 2009 tax year timely filed?

**FACTUAL FINDINGS**

1. For the 2009 tax year, appellant made estimated tax payments totaling \$6,000 via two separate payments of \$3,000 received by FTB on June 15, 2009, and April 15, 2010.
2. On June 25, 2014, appellant filed her 2009 California income tax return, reporting a total tax of \$864, estimated tax payments of \$9,443, and an overpayment of \$8,579, which

<sup>1</sup> Unless otherwise indicated, all “section” references are to sections of the California Revenue and Taxation Code.

- appellant requested be credited to her 2010 tax year.
3. FTB processed appellant's 2009 return and made an adjustment reducing her reported estimated tax payments to the actual \$6,000 amount made toward her 2009 tax year account, resulting in a \$5,136 overpayment. However, FTB did not credit the \$5,136 overpayment to appellant's 2010 tax year because it determined that a credit or refund of the overpayment was barred by the expiration of the statute of limitations.
  4. Appellant did not appeal FTB's determination, but instead, filed a Reasonable Cause – Individual and Fiduciary Claim for Refund, received by FTB on December 15, 2015, requesting that her \$5,136 overpayment from 2009 be credited to the 2013 tax year.<sup>2</sup>
  5. FTB accepted appellant's filing as a claim for refund, and on September 29, 2016, issued a Notice of Action denying this claim, which appellant timely appealed.

### DISCUSSION

No credit or refund shall be allowed or made if a refund claim is not filed by the taxpayer within the later of: (1) four years from the date the return was filed, if filed within the extended due date; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of overpayment. (Section 19306(a).)

Except in limited circumstances not present here, a taxpayer's failure to file a claim for refund, for whatever reason, within the aforementioned period bars him or her from doing so at a later date.<sup>3</sup> (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) It is a taxpayer's responsibility to file a claim for refund within the timeframe prescribed by law. (*Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

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<sup>2</sup> In its briefs, we note that FTB included discussion regarding the timeliness of appellant's 2009 tax return, filed June 25, 2014, as a refund claim, which we take to mean that it considered that claim as part of this appeal. However, as discussed in footnote 4 below, appellant's June 25, 2014 refund claim is time-barred by the applicable statute of limitations. Therefore, even considering this claim on appeal, our holding that appellant failed to file a timely claim for refund for the 2009 tax year remains unchanged.

<sup>3</sup> Section 19316(a) provides that the statute of limitations shall be suspended during any period which an individual taxpayer is "financially disabled."

Regarding the above four-year statute of limitations, appellant did not file her 2009 return by the extended due date (i.e., October 15, 2010), and the due date for appellant’s 2009 return was April 15, 2010. Therefore, the last day for filing a timely claim for refund for the 2009 tax year was April 15, 2014.

With respect to the one-year statute of limitations, FTB received appellant’s two separate payments of \$3,000 for the 2009 tax year on June 15, 2009, and April 15, 2010, which means the last days for filing a timely claim for refund for those payments were June 15, 2010, and April 15, 2011, respectively. The later of the two statutory deadlines required appellant to file a claim for refund by April 15, 2014. However, appellant submitted her claim for refund on December 15, 2015, a year and a half after that deadline expired.

Accordingly, appellant’s claim for refund received by FTB on December 15, 2015, is time-barred under both the applicable four-year and one-year statute of limitations provided by Section 19306(a).<sup>4</sup>

HOLDING

Appellant’s claim for refund was untimely filed.

DISPOSITION

Respondent’s action in denying appellant’s claim for refund for the 2009 tax year is sustained.

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
*Linda C. Cheng*  
8B585BFAC08946D...  
Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
*Neil Robinson*  
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Neil Robinson  
Administrative Law Judge

<sup>4</sup> Likewise, appellant’s June 25, 2014 claim for refund, which was filed after the April 15, 2014 statutory deadline, is time-barred by the applicable statute of limitations.