

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. MCBRIDE

) OTA Case No. 21088459
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OPINION

Representing the Parties:

For Appellant: D. McBride

For Respondent: Camille Dixon, Tax Counsel

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. McBride (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s refund claim of \$4,372.92 for the 2016 tax year.

We decide this matter based on the written record pursuant to the provisions set forth in the Office of Tax Appeals’ Small Case Program (Cal. Code Regs, tit. 18, § 30209.1 et seq.).¹

ISSUE

Whether appellant’s refund claim was timely.

FACTUAL FINDINGS

1. Appellant did not timely file a 2016 California income tax return.
2. Respondent issued to appellant a Demand for Tax Return (Demand) on May 3, 2018.
3. Appellant did not respond to the Demand. Thereafter, respondent estimated appellant’s income based on a third-party information return and issued a Notice of Proposed Assessment (NPA) to appellant on July 2, 2018, for additional tax, a late filing penalty, a demand penalty, a filing enforcement fee, and interest.

¹ Appellant waived the right to an oral hearing and made a qualifying and irrevocable election to have this matter decided under the Small Case Program authorized pursuant to Government Code section 15676.2.

4. Appellant did not protest the NPA and it became final.
5. Respondent took collection action against appellant from February 15, 2019, through June 4, 2019, which satisfied the balance due.
6. On April 26, 2021, the State Controller and respondent announced an extension of time from April 15, 2021, until May 17, 2021, for individual California taxpayers to claim a refund for tax year 2016.²
7. On July 15, 2021, appellant filed a 2016 California Resident Income Tax Return (Return) showing an overpayment of \$4,372.92.
8. Respondent accepted the Return as filed and treated it as a claim for refund.
9. By notice dated July 28, 2021, respondent denied the refund in its entirety because the Return was not filed within the statute of limitations for making a refund claim.
10. This timely appeal followed.

DISCUSSION

R&TC section 19306 sets forth the general statute of limitations for filing a refund claim, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment.

Appellant does not dispute that a refund claim was not filed within the periods authorized by R&TC section 19306 to allow a refund or credit. Appellant also did not file within the extended timeframe announced by respondent. Rather, appellant argues that the statute of limitations should be suspended to the date the Return was filed due to housing issues caused by the COVID-19 pandemic, which prevented appellant from filing prior to that date.

There is no reasonable cause or equitable basis for suspending the statute of limitations for making a refund claim under these facts.³ Except for very limited exceptions not relevant here,⁴ a taxpayer's untimely filing of a claim for *any reason* bars a refund. (*Appeal of Benemi*

² See www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html.

³ Appellant did not provide any explanation for why the Return could not have been filed prior to the COVID-19 pandemic, such as in response to the Demand or NPA in 2018, or collection actions taken in 2019.

Partners, L.P., 2020-OTA-144P.) “Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted.” (*Ibid.*)

Accordingly, because appellant did not file a claim for refund within the periods set forth in R&TC section 19306, respondent properly denied appellant’s refund claim.

HOLDING

Appellant’s refund claim was untimely.

DISPOSITION

Respondent’s action is sustained.

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 3/22/2022

⁴ R&TC section 19316 provides for a narrow exception for suspending the statute of limitations where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months.