

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**M. NIXON**

) OTA Case No. 21088464  
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**OPINION**

Representing the Parties:

For Appellant: M. Nixon

For Respondent: Brad J. Coutinho, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Nixon (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,651.99 for the 2015 tax year.

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

**ISSUE**

Whether the statute of limitations bars appellant’s claim for refund for the 2015 tax year.

**FACTUAL FINDINGS**

1. For the 2015 tax year, FTB received third party payor information indicating that appellant received sufficient income to have triggered a California tax filing requirement. As such, FTB issued a Demand for Tax Return (Demand), but appellant did not timely file a tax return or respond to the Demand.
2. Following appellant’s nonresponse to the Demand, on July 10, 2017, FTB issued a Notice of Proposed Assessment (NPA) for the 2015 tax year. Appellant did not respond to the NPA, the proposed liability became final, and FTB commenced collection actions.
3. From April 12, 2018, to February 15, 2019, FTB collected payments that satisfied the balance due for the 2015 tax year.

4. On July 6, 2021, FTB received appellant's 2015 California Resident Income Tax Return (Form 540), resulting in overpaid tax of \$1,651.99 on appellant's account.
5. FTB treated appellant's Form 540 as a claim for refund which it denied. This timely appeal followed.

### DISCUSSION

R&TC section 19306(a), provides, in part, that no credit or refund shall be allowed after a period ending: (1) four years from the date the return was filed (if filed within the extended filing period); (2) four years from the last date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment, whichever is later, unless before the expiration of the period, the taxpayer files a claim for refund or credit. As such, appellant must timely claim a refund of any overpayments before the expiration of the latest of the three time periods described above. R&TC section 19306 explicitly defines the statute of limitations, and its language must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.)

The statute of limitations may not be tolled or suspended based on equity or for reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Even if the taxpayer shows that he or she did not actually owe the tax paid, the taxpayer is barred from receiving a refund if the statute of limitations has elapsed. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Federal courts have held that fixed deadlines may appear harsh because they can be missed by a single day or even a single hour, but the resulting occasional harshness is redeemed by the clarity they give to the legal obligation. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Here, it is undisputed that appellant filed her claim for refund after the expiration of the statute of limitations because the claim for refund was filed on July 6, 2021, and not by April 15, 2020, which is further extended to July 15, 2020, due to the COVID-19.<sup>1</sup> Appellant's assertion on appeal is that she experienced life difficulties, including personal loss, anxiety, and depression. Appellant also states that she did not know there was a statute of limitations to claim a refund. We understand appellant's difficult personal circumstances; however, the issue at present is the statute of limitations. For purposes of applying the statute of limitations for overpayments, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) Furthermore, appellant has the burden of proof to show that she is entitled to a credit or refund and that the claim is timely. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*) Here, appellant did not provide any other provision under the law as applied to these facts that would allow us to toll the statute of limitations in this case. Appellant's assertions alone are not enough to satisfy the burden of proof to find error in FTB's disallowance of the claim for refund.

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<sup>1</sup> To reiterate, R&TC section 19306 provides that appellant's claim for refund must have been filed within the later of three different time periods to be within the statute of limitations. The first time period is only applicable if appellant timely filed her California Resident Income Tax Return, as such the first time period is not applicable because the tax return was not timely filed. The second time period is four years from the original due date of the return without regard to any extension, which would be April 15, 2020. The third time period is one year from the date of payment or when FTB received payment through its bank levies, which would be February 15, 2020, for the latest payment levied by FTB. (See Treas. Reg. § 301.6611-1(b) & (c).) It is undisputed that the second time period deadline, or April 15, 2020, is the latest of all three different time periods.

Furthermore, due to COVID-19, in cases where an applicable statute of limitations to file a timely claim for refund expires during the period between March 12, 2020, through July 15, 2020 (postponement period), the FTB will consider the claim timely if filed on or before July 15, 2020. (See FTB Notice 2020-02.) As such, since April 15, 2020, falls between the postponement period, July 15, 2020, is when the statute of limitations expired for appellant's claim.

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2015 tax year.

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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*Eddy Y.H. Lam*

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Eddy Y.H. Lam

Administrative Law Judge

We concur:

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*E. S. Ewing*

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Elliott Scott Ewing

Administrative Law Judge

DocuSigned by:

*Natasha Ralston*

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Natasha Ralston

Administrative Law Judge

Date Issued: 4/5/2022