

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**J. A. JACKSON AND
W. H. JACKSON**

) OTA Case No. 21119037
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OPINION

Representing the Parties:

For Appellants: Samantha Johnson, Representative,
Taxpayer Appeals Assistance Program
For Respondent: AnaMarija Antic-Jezildzic, Specialist

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. A. Jackson (appellant-wife) and W. H. Jackson (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,069.69 for the 2016 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants’ claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant-wife worked in California and earned California source wages during 2016.
2. Appellants did not timely file a California income tax return for the 2016 tax year.
3. FTB sent appellants a Request for Tax Return (Request) for the 2016 tax year.

4. Appellants failed to respond to the Request or file a return. FTB issued appellants a Notice of Proposed Assessment (NPA), which estimated appellants' California taxable income.
5. Appellants did not protest the NPA, and it became final.
6. When appellants failed to pay the NPA, FTB pursued collection actions and imposed a \$315 collection cost recovery fee, and a \$40 lien fee.
7. On April 26, 2021, the California 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 2016.¹
8. On July 15, 2021, FTB collected \$500 from appellants, via bank levy.
9. In addition, three other payments or credits (payments) were applied to satisfy the NPA: (1) \$790 paid effective April 15, 2017, for California income tax withholdings for 2016; (2) \$2,192.69 paid effective May 14, 2019, and applied from appellants' 2018 tax year balance with FTB; and (3) \$1.56 in credit interest paid effective October 28, 2021.
10. On August 26, 2021, appellants filed an untimely joint California income tax return for non-residents (Form 540NR 2016) reporting a tax liability of \$556. FTB accepted appellants' 2016 tax return as filed and treated it as a claim for refund for \$2,571.25, which is the difference between the amount due (\$913) and the payments for 2016 (\$3,484.25).
11. FTB granted appellant's claim for refund in the amount of \$501.56, representing the bank levy and credit interest on the bank levy. FTB denied the remainder of the refund claim in the amount of \$2,069.69 as untimely.
12. On October 28, 2021, FTB applied \$501.56 as an agency offset payment to satisfy appellants' liabilities to the California Department of Motor Vehicles (DMV).

DISCUSSION

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

¹ 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.

(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 Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations for making a refund claim under these facts. Except for very limited exceptions not relevant here,² a taxpayer's untimely filing of a claim for any reason bars a refund. (*Appeal of Benemi 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.*) The law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances. (*United States v. Brockamp* (1997) 519 U.S. 347.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra*; *Appeal of Khan*, 2020-OTA-126P.)

Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223; *Appeal of Estate of Gillespie, supra.*) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

With respect to the payments at issue in this appeal (\$2,069.69), appellants' August 26, 2021, claim for refund was filed after the May 17, 2021, due date announced by FTB. Appellants do not dispute that a refund claim was not filed within the periods authorized by R&TC section 19306 to allow a refund or credit for these payments.

As mentioned, four payments were applied to appellants' 2016 liability: (1) the \$790 payment, effective April 18, 2017; (2) the \$500 payment on July 15, 2021; (3) the \$2,192.69 payment on May 14, 2019; and (4) the \$1.56 payment on October 28, 2021. The one-year statute of limitations for the April 18, 2017 payment expired on April 18, 2018, which is more than three years before appellants filed their claim for refund. The one-year statute of limitations for the May 14, 2019 payment expired May 14, 2020, which is approximately one year before appellants filed their claim for refund. Thus, the statute of limitations bars a refund for the \$790

² 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.

payment and the \$2,192.69 payment. The claim was timely as to the \$500 payment and the \$1.56 payment.

Appellants argue that the failure to file was an honest mistake because appellant-wife only worked in California for a very brief period of time, they were unable to get questions answered from the Internal Revenue Service and other government offices, and appellants suffered financial issues due to becoming unemployed. Appellants also contend that they are still owed \$501.56, the granted portion of their claim.

With respect to the overpayments of \$500 and the \$1.56 in interest, FTB already refunded this amount to appellant; however, the refund was intercepted by DMV prior to payment to appellants. (See Gov. Code, §§ 12419.2 [offset program], 12419.5 [authority].) As such, this issue is moot, and we lack jurisdiction address any liabilities assessed by DMV.³

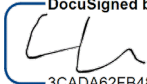
With respect to the overpaid balance totaling \$2,069.69, as discussed above, the language of R&TC section 19306 is explicit, and we lack statutory authority to grant a refund under these facts. Since appellants' claim for refund was filed after the statute of limitations as to the denied amount, we lack authority to grant a refund for any portion of the remaining two payments.

HOLDING

Appellants' claim for refund, as it pertains to the remaining overpayment of \$2,069.69, is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 5/3/2022

³ Appellants would need to contact DMV for any claims on this amount.