

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21098551
G. MORSE AND)
S. MORSE)
_____)

OPINION

Representing the Parties:

For Appellants: Christopher D. Tagawa, Representative

For Respondent: Alisa L. Pinarbasi, Tax Counsel

For Office of Tax Appeals: Craig Okihara, Business Tax Specialist III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Morse and S. Morse (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,258.48 for the 2015 tax year.

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. Appellants timely filed their joint 2015 California resident income tax return on October 15, 2016.
2. On March 4, 2020, appellants paid a 2015 personal income tax liability to Minnesota.¹
3. In March 2021, appellants filed an amended joint 2015 California resident income tax return. On that return, they claimed a refund of \$1,152 related to the other state tax credit

¹ Appellants’ opening brief includes a copy of a memorandum from their capital management company, which indicates that on March 4, 2020, the capital management company filed Minnesota tax returns for 2015, 2016, 2017, and 2018, and paid all taxes on appellants’ Minnesota source income, including applicable interest. For the 2015 tax year at issue, appellants paid Minnesota taxes of \$1,194. FTB does not dispute these facts.

(OSTC) for personal income taxes paid on their behalf to Minnesota by a pass-through entity that derived Minnesota-sourced income.

4. On July 27, 2021, FTB denied appellants' claim for refund, explaining that the overpayment of \$1,258.48 for 2015 was barred by the statute of limitations.²
5. This timely appeal followed.

DISCUSSION

R&TC section 19311.5 provides that on or after January 1, 2009, if any taxes paid to another state result in an allowable credit under R&TC section 18001, a claim for credit or refund of an overpayment of income tax attributable to a credit allowable under R&TC section 18001 may be filed within (1) one year from the date such tax is paid to the other state, or (2) within the period provided in R&TC section 19306, whichever period expires later.³ Since appellants do not dispute they filed their refund claim outside the statute of limitations under R&TC section 19306, only the former one-year statute of limitations under R&TC section 19311.5 is applicable.

Under R&TC section 19311.5, appellants were required to file a refund claim by March 4, 2021, which is one year from the date tax was paid to Minnesota. On appeal, FTB provides a copy of appellants' amended 2015 California tax return, date stamped March 10, 2021, which FTB asserts was the filing date. Although the amended return copy was signed and dated March 2, 2021, appellants have not provided any evidence that they filed the amended return on or before the March 4, 2021 deadline (such as a certified mail receipt). Since appellants have not met their burden of proof, their claim for refund was not timely under R&TC section 19311.5.

² FTB's notice did not include a summary of its computation of the disallowed \$1,258.48 overpayment or why it differs from the \$1,152 refund claimed on appellants' amended 2015 California tax return.

³ California law allows resident taxpayers, such as appellants, to claim an OSTC for taxes paid to another state on income sourced to that other state that is also sourced and taxed in California. (R&TC, § 18001.)

HOLDING

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

DISPOSITION

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

DocuSigned by:
Eddy Y.H. Lam
Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Kenneth Gast
Kenneth Gast
Administrative Law Judge

Date Issued: 6/16/2022