

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

In the Matter of the Appeal of:

**R. PEREZ AND**  
**E. PEREZ**

) OTA Case No. 21108796  
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**OPINION**

Representing the Parties:

For Appellants: R. Perez

For Respondent: Eric R. Brown, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Perez and E. Perez (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,687.39 for the 2011 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 set forth under R&TC section 19306.

**FACTUAL FINDINGS**

1. Appellants untimely filed their 2011 California Resident Income Tax Return on May 4, 2021.
2. Appellants made payments according to an installment plan until February 12, 2015. Their account for 2011 reflects a credit of \$1,687.39. FTB treated the late filing of the 2011 tax return as a claim for refund for the \$1,687.39 credit.

3. On October 4, 2021, FTB notified appellants it was denying appellants' claim for refund based on the expiration of the statute of limitations.
4. Appellants filed this timely appeal.

#### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

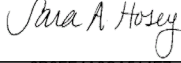
Appellants' claim for refund for tax year 2011 is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. Appellants filed their 2011 California tax return, which was treated as a refund claim, on May 4, 2021. The first statute of limitations period is not applicable because appellants did not file the 2011 return pursuant to a valid extension of time to file. The second statute of limitations period expired on April 15, 2016, because appellants' 2011 return was originally due on April 15, 2012. (R&TC, § 18566.) Lastly, the third statute of limitations period expired on February 12, 2016, because appellants' last payment for the 2011 tax year was made on February 12, 2015. (R&TC, § 19007.) Therefore, appellants' claim for refund is barred by the statute of limitations and FTB's action must be sustained.

HOLDING

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

DISPOSITION

FTB's action is sustained in full.

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Sara A. Hosey  
Administrative Law Judge

Date Issued: 6/9/2022