

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**A. KHUBANI AND
N. KHUBANI**

) OTA Case No. 21119004
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OPINION

Representing the Parties:

For Appellants: Dennis Zinkevich, CPA

For Respondent: Leoangelo C. Cristobal, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Khubani and N. Khubani (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$63,777 for the 2015 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. On October 14, 2016, appellants filed a timely 2015 tax year nonresident California income tax return (on extension).¹
2. On October 15, 2020, appellants amended their 2015 return by filing a California Form 540X. In the amended return, appellants revised their income and tax, resulting in a reported overpayment and claimed a refund of \$63,777. After filing the Form 540X,

¹ According to appellants, “[t]he taxpayers are tax knowledgeable and retained Certified Public Accountants, tax experts, - Perelson Weiner LLP (PW), Certified Public Accountants, located in New York City, to prepare their complicated tax returns.”

appellants filed with respondent a Reasonable Cause – Individual and Fiduciary Claim for Refund, claiming a refund of the same amount – i.e., \$63,777.

3. Respondent denied appellants' claim for refund on the grounds that the claim for refund was filed after the statute of limitations had expired.
4. Appellants filed this timely appeal.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The statute of limitations to file a claim for refund is set forth in R&TC section 19306, and provides 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 due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a); *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The statute of limitations to obtain a refund is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. Taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

In this case, there is no dispute that appellants filed their claim for refund after the applicable statute of limitations expired. Indeed, appellants concede that they filed their claim for refund on October 15, 2020, which was one day after the statute of limitations expired on October 14, 2020.² However, appellants make reasonable cause-type assertions related to circumstances surrounding the COVID-19 pandemic. They argue that these circumstances, which were out of their control, prevented them from timely filing their claim for refund, and

² Appellants' claim for refund was filed on October 15, 2020, which was later than: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file (appellants' return was filed on extension) – i.e., October 14, 2016; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file) – i.e., April 15, 2016; or (3) one year from the date of overpayment – i.e., the date of payment with the filing of the return on extension was October 14, 2016. (See R&TC, § 19306(a); *Appeal of Jacqueline Mairghread Patterson Trust, supra.*)

therefore constitute grounds for allowing their claim, even though the statute of limitations had expired.³ We understand appellants’ position; however, there is no “reasonable cause” exception to the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA- 052P.) Moreover, neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Ibid.*) While the claim was filed one day late, it is nevertheless outside of the statute of limitations for granting a refund claim. We recognize that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation. (See *Appeal of Cornbleth*, 2019-OTA-408P, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.) In sum, appellants have not met their burden of proof to show respondent erred in denying appellants’ claim for refund.

HOLDING

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

DISPOSITION

Respondent’s action is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

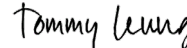
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Sheriene Anne Ridenour
Administrative Law Judge

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Tommy Leung
Administrative Law Judge

Date Issued: 6/10/2022

³ Appellants state, among other contentions, “[t]herefore, we submit that due to circumstances beyond taxpayer and tax preparer’s control caused by Covid19 [*sic*] pandemic, the mailing was postmarked one day late.”