

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. BERNINGSON

) OTA Case No. 21119131
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OPINION

Representing the Parties:

For Appellant: L. Berningson

For Respondent: Camille Dixon, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Berningson (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$508 for the 2016 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellant untimely filed his California Resident Income Tax Return for the 2016 tax year on August 9, 2021.
2. Appellant reported California taxable income based on federal adjusted gross income and the California standard deduction for appellant’s filing status. Appellant also reported a personal exemption credit. After applying withholding credits, appellant reported an overpayment for the amount at issue.
3. FTB treated appellant’s return as a claim for refund.
4. On October 25, 2021, FTB notified appellant that "since [he] did not file [his] tax return . . . before the statute of limitations expired, [FTB] fully denied [his] claim for refund."

5. This timely appeal followed.

DISCUSSION

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 original 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).) A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

The law does not provide for the waiver of the statutory period based on reasonable cause. A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*)). This is true even when it is later shown that the tax was not owed in the first instance. (*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.*)

For those refund claims due by April 15, 2021, under the four-year statute of limitations, the claim is considered timely if the individual taxpayer filed the claim on or before the extension date of May 17, 2021.¹

Appellant argues that his 2016 taxes were submitted by H&R Block within the extended due date period. Appellant asks the Office of Tax Appeals (OTA) to review FTB's determination since he has suffered financial hardship (i.e., he claims to have been unemployed over the last year and a half and these funds would help tremendously).

Here, it is undisputed that appellant's California Resident Income Tax Return for the 2016 tax year was filed on August 9, 2021, well after the May 17, 2021 deadline. Also, the claimed refund is based on withholding credits paid during the 2016 tax year. The withholding credit would be deemed effective on the original due date of the return, in this case April 15, 2017. As such, OTA finds appellant's claim for refund is time barred unless the statute of limitations was suspended or otherwise extended.

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>

When a taxpayer alleges financial disability to suspend, and thus extend, the limitations period to file a timely claim for refund, a physician’s affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs. (R&TC, § 19316(a); *Gillespie, supra.*) In this case, appellant’s claimed financial hardship, based on his employment status, does not meet the requirements of R&TC section 19136. Therefore, appellant has not established financial disability, or any other reason that the statute of limitations should be tolled.

HOLDING

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

DISPOSITION

FTB's action in denying appellant's refund claim is sustained.

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 6/9/2022