

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

In the Matter of the Appeal of:

**J. CROTTY AND**  
**M. CROTTY**

) OTA Case No. 21129306  
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**OPINION**

Representing the Parties:

For Appellants: Ashley Wadsworth, Representative

For Respondent: Christopher M. Cook, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, J. Crotty and M. Crotty (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,897 for the 2016 tax year.

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Whether the statute of limitations bars appellants’ claim for refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. Appellants are California residents who timely filed their joint 2016 California Resident Income Tax Return (original return).
2. On July 14, 2021, appellants filed a joint 2016 California Amended Income Tax Return (amended return). FTB accepted the amended return as filed, which it treated as a claim for refund for the 2016 tax year.
3. FTB denied appellants’ claim for refund because appellants failed to file their amended return claiming the refund before the statute of limitations expired.
4. This timely appeal followed.

## DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 the overpayment. 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 (*Gillespie*)). A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602 (*Dalm*)). Such 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. (*Appeal of Khan*, 2020-OTA-126P.)

Appellants do not contest – and OTA finds no error in – FTB's determination that their claim for refund was untimely filed and barred by the statute of limitations.<sup>1</sup> Appellants' sole contention on appeal is that their accountant was unable to timely file the amended return by the due date due to a lack of staff caused by the COVID-19 pandemic. However, a taxpayer's untimely filing of a claim for any reason bars a refund. (*Benemi, supra; Dalm, supra*, 494 U.S. at p. 602.) OTA has no authority to grant relief except where the law specifically allows. (*Gillespie, supra; Benemi, supra*.)

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<sup>1</sup> OTA notes that FTB did not correctly determine the two four-year statute of limitations under R&TC section 19306. The first four-year statute of limitations is not applicable because the original return was timely filed by the original due date and therefore not filed on extension. The correct second four-year statute of limitations expiration date was postponed to May 17, 2021, and therefore was not April 15, 2021, pursuant to FTB's postponement for the 2016 tax year. (See *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, April 26, 2021, available at: <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>.)

HOLDING

The statute of limitations bars appellants’ claim for refund for the 2016 tax year.

DISPOSITION

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

DocuSigned by:  
*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
3AF5C32BB83B456...  
Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Daniel Cho*  
7B28A07A7E0A43D...  
Daniel K. Cho  
Administrative Law Judge

Date Issued: 6/2/2022