



Tax Return for the 2016 tax year. Because appellant did not respond by the applicable due dates, respondent issued Notices of Proposed Assessment (NPAs) for both the 2015 tax year and the 2016 tax year. Appellant did not file a protest to either NPAs, and the assessments went final.

3. For the 2015 tax year, respondent received or recorded the following payments: (1) \$120.00 tax withholding;<sup>2</sup> (2) \$120.00 tax transfer from the 2018 tax year on February 13, 2019; (3) \$900.00 total installment payments between May 1, 2019 through January 2, 2020; (4) \$67.90 collection payment received on August 20, 2020; (5) \$25.00 payment received on November 3, 2020; (6) \$251.97 collection payment received on June 29, 2021; and (7) \$0.29 interest allowed on July 16, 2021.
4. For the 2016 tax year, respondent received or recorded a withholding credit of \$120.
5. On July 6, 2021, appellant filed California personal income tax returns for the 2015 and 2016 tax years. Both returns reported zero tax and claimed a refund of \$120. Respondent processed and accepted both returns as filed and considered these tax returns as claims for refund.
6. For the 2015 tax year, respondent refunded or credited payments made after July 6, 2020, but issued a letter denying appellant's claim for refund on the earlier payments.
7. For the 2016 tax year, respondent did not refund or credit any amount. Respondent issued a letter denying appellant's claim for refund.
8. This timely appeal followed.

### DISCUSSION

The taxpayer has the burden of proof to show that a claim for refund is timely, and the taxpayer is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, *supra*.)

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<sup>2</sup> Although no specific date was indicated in the record, withholding credits are deemed paid on the due date of the return. (R&TC, § 19002.)

Since no timely return was filed for the 2015 and 2016 tax years, the applicable claim for refund statute of limitations here is the later of four years from the last day to file the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) Otherwise, the claim for refund is untimely, and no credit or refund is allowed. (*Appeal of Estate of Gillespie, supra.*)

There is no reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Estate of Gillespie, supra.*) A taxpayer's untimely filing of a refund claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*)

For the 2015 tax year, the four-year statute of limitations period expired on July 15, 2020 (four years from the due date of April 18, 2016 plus a COVID-19 extension); and for the 2016 tax year, the four-year statute of limitations period expired on May 17, 2021 (four years from the due date of April 18, 2017 plus a COVID-19 extension).<sup>3</sup> Appellant's claims for refund for the 2015 and 2016 tax years were filed on July 6, 2021. Therefore, appellant filed his claims for refund beyond the four-year statute of limitations period for both the 2015 and 2016 tax years.

As for the one-year statute of limitations period, since appellant filed claims for refund for the 2015 and 2016 tax years on July 6, 2021, any overpayment made more than one year prior is barred.

For the 2015 tax year, appellant made multiple payments to respondent. However, only the payments made after July 6, 2020, totaling \$345.16,<sup>4</sup> are not barred by the statute of limitations. Of this \$345.16 amount, respondent transferred \$245.00 as a credit to the 2017 tax year balance and refunded \$100.16 to appellant. Thus, appellant was refunded or credited the \$345.16 that was within the statute of limitations, and respondent correctly denied a refund for the payments made more than one year prior to appellant's 2015 claim for refund.

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<sup>3</sup> R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. Where an applicable statute of limitations to file a timely claim for refund expires during the period of March 12, 2020, through July 15, 2020, respondent will consider the claim timely if filed on or before July 15, 2020. (Respondent Notice 2020-02.) Similarly, where the statute of limitations to file a timely claim for refund normally expires on April 15, 2021, respondent will consider the claim timely if filed on or before May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

<sup>4</sup> This amount is comprised of payments of \$67.90 received on August 20, 2020; \$25.00 received on November 3, 2020; \$251.97 received on June 29, 2021; as well as allowed interest of \$0.29.

For the 2016 tax year, appellant made one payment through a withholding credit of \$120, which is deemed paid on the return due date of April 18, 2017. (R&TC, § 19002.) Thus, since appellant filed his refund claim on July 6, 2021, over one year after the date of the overpayment, this overpayment is barred under the statute of limitations.<sup>5</sup>

HOLDING

Appellant has not shown he is entitled to any refund amounts denied by respondent for the 2015 and 2016 tax years.

DISPOSITION

Respondent’s actions are sustained.

DocuSigned by:  
  
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Huy “Mike” Le  
Administrative Law Judge

We concur:

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Eddy Y.H. Lam  
Administrative Law Judge

DocuSigned by:  
  
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Keith T. Long  
Administrative Law Judge

Date Issued: 7/28/2022

<sup>5</sup> Appellant also alleges that he is disabled and has poor health; however, he has not submitted any evidence to show that he is “financially disabled,” as defined in R&TC section 19316.