

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

In the Matter of the Appeal of:  
**T. SHORTER**

) OTA Case No. 21108741  
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**OPINION**

Representing the Parties:

For Appellant: T. Shorter  
For Respondent: Camille Dixon, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Shorter (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,552.53 for the 2015 tax year.<sup>1</sup>

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 for the 2015 tax year is barred by the statute of limitations.

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<sup>1</sup> Appellant and appellant’s spouse filed a claim for refund in the form of a joint California income tax return. However, appellant’s spouse is not a party to this appeal.

### FACTUAL FINDINGS

1. Appellant and appellant's spouse did not file a timely return.<sup>2</sup>
2. On May 16, 2017, FTB issued a Demand for Tax Return (Demand) indicating that it received information that appellant received sufficient income to trigger the requirement to file a California income tax return. The Demand provided appellant until June 21, 2017, to file a return, show that a return had already been filed, or explain why she did not have a filing requirement.
3. FTB also issued a Request for Tax Return dated May 30, 2017 (Request), to appellant's spouse indicating that it received information that appellant's spouse received sufficient income to trigger the filing requirement. FTB provided appellant's spouse until July 5, 2017, to file a return, show that a return had already been filed, or explain why he did not have a filing requirement.
4. Appellant did not respond to FTB's Demand. Appellant's spouse did not respond to FTB's Request.
5. On July 17, 2017, FTB issued a Notice of Proposed Assessment (NPA) to appellant for \$5,226.00 in tax, accrued interest, a late-filing penalty of \$1,306.50, and a demand penalty of \$1,306.50. On July 31, 2017, FTB issued an NPA to appellant's spouse for \$738.00, accrued interest, and a late-filing penalty of \$184.50.
6. FTB initiated collection action and received payments during the period May 29, 2018, through July 12, 2021, totaling \$1,603.98.
7. On March 1, 2021, appellant and appellant spouse filed a California resident income tax return (Form 540) for the 2015 tax year claiming the married filing jointly filing status. Appellant and appellant spouse reported tax of \$1,443, and claimed withholdings of \$3,107. The return reflected an overpayment of \$1,664.
8. FTB accepted the return as filed and combined appellant's account with appellant's spouse's accounts (the couple's account). FTB abated the late filing penalty and reduced the demand penalty to \$360.75. After applying withholding credits and other payments, the couple's account reflected payments of \$4,710.98. The payments reduced by the tax

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<sup>2</sup> It is unclear if this fact is in dispute as appellant asserts that her return was "filed for years." However, we note that the CPA letter which appellant provided as evidence of said filing is dated January 31, 2017, well after the April 15, 2016 due date. Hence our finding that appellant's return was not timely filed.

- liability, the demand penalty, and fees resulted in an overpayment of \$2,610.23 for tax year 2015.
9. FTB transferred \$57.75 to appellant's and appellant's spouse's outstanding balance for tax year 2019.
  10. By letter dated July 29, 2021, FTB explained to appellant and appellant's spouse that the statute of limitations had expired and appellant's remaining overpayment of \$2,552.53 could not be refunded.
  11. This timely appeal followed.

### DISCUSSION

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).) A taxpayer has the burden of proving that the claim for refund is timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*).)

Here, appellant did not file a timely return. As such, appellant's claim for refund was timely if it was filed within four years of the return's due date (i.e., April 15, 2016) or within one year of the overpayment. With her appeal, appellant provides a January 31, 2017 letter from her CPA and states that it is evidence that the return has been filed for years. We note that January 31, 2017, is within the four-year period following the due date of the return. If a return was filed on this date, appellant's claim for refund would be within the statute of limitations. However, the January 31, 2017 letter does not state that a return has been filed on appellant's behalf. Instead, the letter requests that appellant review the return, and sign documentation, before filing could occur. There is nothing in the record to show that a return was actually filed in 2017 by appellant, appellant's spouse, or the CPA. Appellant has not met her burden of proof. (*Gillespie, supra.*)

Concerning the March 1, 2021 copy of appellant's return, a claim for refund may be timely if made within one year of the overpayment. Here, appellant made payments totaling \$57.75 in July 2021, which FTB transferred from appellant's account for 2015 to appellant's account for 2019. Appellant has not shown that she made any other payments within one year of


March 1, 2021. Therefore, appellant’s claim for refund with respect to all other payments are barred by the statute of limitations.

HOLDING

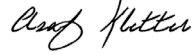
Appellant’s claim for refund for the 2015 tax year is barred by the statute of limitations.

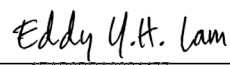
DISPOSITION

FTB’s partial denial of appellant’s claim for refund for the 2015 tax year is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
  
D17AEDDCAAB045B...  
Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
  
TEAB3BDA3324477...  
Eddy Lam  
Administrative Law Judge

Date Issued: 7/28/2022