

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

In the Matter of the Appeal of: ) OTA Case No. 21119028  
L. CALASIBETTA AND )  
P. CALASIBETTA )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Frederick Butcher CPA  
Connie Buonomo, CPA

For Respondent: Joel Smith, Tax Counsel III

A.VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Calasibetta and P. Calasibetta (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,428 for the 2016 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

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

**FACTUAL FINDINGS**

1. FTB sent a notice, dated February 12, 2021, to Ms. Calasibetta, informing her that based on its records, it appeared that she may be entitled to nonwage withholding credits, but that there was no California tax return on file for her.
2. Appellants filed a joint California tax return for the 2016 tax year on July 6, 2021, reporting an overpayment.

3. FTB accepted appellants' return and treated it as a claim for refund.
4. FTB determined that appellants had an overpayment, but denied appellants' claim for refund, stating that the overpayment was barred by the statute of limitations.
5. This timely appeal followed.

### DISCUSSION

Issue: Whether the statute of limitations bars appellants' claim for refund for the 2016 tax year.

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to R&TC section 18567 or 18604 (whichever is applicable); (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proving entitlement to a refund and showing that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2020-OTA-187P.)

#### Four-Year Statute of Limitations

For purposes of R&TC section 19306, a return filed within four years from the last day prescribed for filing the return that shows a credit for tax withholdings or estimated tax payments in excess of one dollar shall be treated as a timely refund claim for the excess amount. (R&TC, § 19307.)

Appellants failed to file their 2016 return by the extended due date pursuant to R&TC section 18567. The four-year statute of limitations therefore runs from the original due date, April 15, 2017. (R&TC, § 19306(a).) For the 2016 tax year, the four-year statute of limitations expired on April 15, 2021, which is four years from the April 15, 2017 due date of the return. Due to the Covid-19 state of emergency, under the four-year statute of limitations, a refund claim would be considered timely if it was filed on or before the postponement date of May 17, 2021.<sup>1</sup> Appellants filed their 2016 return on July 6, 2021, which is beyond the postponed four-year statute of limitations period.

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<sup>1</sup> 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>.

On appeal, appellants argue that they filed a timely refund claim within the four-year statute of limitations. In addition, they assert that they obtained an extension to file their 2016 federal return to October 15, 2017.<sup>2</sup> Appellants submitted a copy of their 2016 federal Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.<sup>3</sup> To the extent that appellants argue that an extension granted for the filing of their 2016 federal return made their California refund claim timely, it should be noted that a federal extension has no bearing on the California tax deadline. Because appellants did not file a 2016 California return by the extended deadline of October 15, 2017, the four-year statute of limitations expired four years from the original filing deadline, April 15, 2017. (R&TC § 19306(a).)

As explained above, FTB did grant a special postponement due to Covid-19, such that a refund claim for 2016 would be considered timely if it was filed on or before May 17, 2021. However, appellants did not file their claim for refund until July 6, 2021, and their refund claim is thus barred by the four-year statute of limitations.

#### One-Year Statute of Limitations

The payment for appellants' 2016 tax year is the nonwage withholding credits. For purposes of claiming a refund within one year of an overpayment, the nonwage withholding credits at issue in this appeal are deemed paid on the return filing due date, which was April 15, 2017. (R&TC, § 19002(c)(1); *Appeal of Jacqueline Mairghread Patterson Trust, supra.*) A claim for refund of the withholding credits would be only timely if filed within one year from the date the withholding credits are deemed paid (i.e. filed on or before April 15, 2018). Appellants' refund claim was filed on July 6, 2021, more than one year after the

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<sup>2</sup> In their opening brief, appellants also contend that their filing was delayed because their mother became seriously ill. However, appellants do not provide documentation to show how her illness impacted their ability to file the California return. Furthermore, appellants confirmed during a conference held for this appeal that they did not intend to pursue this line of argument, and that their position in this matter was that they had filed the California return within an extension. As a result, the analysis here is focused on the timeliness of the claim for refund.

<sup>3</sup> For federal tax returns, an individual taxpayer may obtain an automatic six-month extension of the April 15th filing deadline by submitting to the IRS a completed federal Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, by April 15, which extends the time to file a federal return to October 15 of the year following the tax year at issue. (Treas. Reg. § 1.6081-4.) For California tax returns, an individual taxpayer is granted an automatic six-month extension to file a California return (without having to file a written extension request) if the return is filed within six months of the original due date. (R&TC, § 18567; Cal. Code. Regs., tit. 18, § 18567.)

withholding credits were deemed paid. As such, appellants' refund claim is barred by the one-year statute of limitations.


The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P; *Appeal of Jacqueline Mairghread Patterson Trust, supra*; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) 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; *Appeal of Benemi Partners, L.P., supra*.) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249.) In this case, without a timely refund claim, appellants' claim for refund is barred by the statute of limitations.

#### HOLDING

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

#### DISPOSITION

FTB's action denying appellants' claim for refund for the 2016 tax year is sustained.

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Amanda Vassigh  
Administrative Law Judge

Date Issued: 8/17/2022