

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**V. HINCK**

) OTA Case No. 21119150  
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**OPINION**

Representing the Parties:

For Appellant: V. Hinck

For Respondent: AnaMarija Antic-Jezildzic, Specialist

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, V. Hinck (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,641.31<sup>1</sup> 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’s 2016 return was filed late on August 5, 2021, claiming a \$0 tax liability, withholding credits of \$1,623.00, which was applied to appellant’s account on April 15, 2017, and a refund of \$1,623.00.
2. Respondent transferred a credit of \$1,018.31 from the 2017 tax year to appellant’s 2016 tax year on October 17, 2018.

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<sup>1</sup> This amount consists of \$1,623.00 withholding credit shown on the 2016 return and a \$1,018.31 credit transferred from the 2017 tax year.

3. Respondent treated appellant's 2016 return as a claim for refund totaling \$2,641.31, which respondent denied.
4. This timely appeal followed.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent 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 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).) 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.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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. (*Ibid.*) 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.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Appellant acknowledges that she did not timely file her 2016 California tax return, but states that at the time she electronically filed her 2016 federal tax return in April of 2017, she believed that she had also electronically filed her 2016 California return. Appellant states that she would be grateful for even a partial refund.

Appellant filed her 2016 return on August 5, 2021. Appellant's 2016 return was due on April 18, 2017.<sup>2</sup> 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 an extension

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<sup>2</sup> April 15, 2017, was a Saturday, and the following Monday, April 17, 2017, was the holiday of Emancipation Day.

date of May 17, 2021.<sup>3</sup> Thus, appellant’s claim for refund is barred under the four-year statute of limitations. Pursuant to the one-year statute of limitations, the time to claim appellant’s refund expired one year from the date of appellant’s last payment, the credit transferred from the 2017 tax year on October 17, 2018. Therefore, appellant’s claim for refund is also barred under the one-year statute of limitations which expired on October 17, 2019. Despite appellant’s initial belief that the return was timely filed, the language of the statute of limitations is explicit and must be strictly construed. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp, supra.*) Thus, there is no basis to grant appellant’s claim for refund.

### HOLDING

Appellant’s claim for refund for 2016 is barred by the statute of limitations.

### DISPOSITION

Respondent’s denial of the claim for refund for 2016 is sustained.

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*Natasha Ralston*

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Natasha Ralston

Administrative Law Judge

We concur:

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*Amanda Vassigh*

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Amanda Vassigh

Administrative Law Judge

DocuSigned by:

*Ovsep Akopchikyan*

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Ovsep Akopchikyan

Administrative Law Judge

Date Issued: 8/1/2022

<sup>3</sup> <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>