

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

In the Matter of the Appeal of:

**S. YIP**) OTA Case No. 21119162  
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)**OPINION**

Representing the Parties:

For Appellant:

S. Yip

For Respondent:

Eric R. Brown, Tax Counsel III

For Office of Tax Appeals:

Michelle Huh, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Yip (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$2,000 for the 2016 tax year.

Appellant 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.) Appellant 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 appellant's claim for refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. Appellant made an estimated tax payment of \$2,000 by check dated April 1, 2017, using a 2016 estimated tax payment form (Form 540-ES), which FTB credited to his account effective April 15, 2017. On the 2016 estimated tax payment form, appellant indicated he was residing at a foreign address outside of the United States. The record contains no indication that appellant was not a calendar-year taxpayer that did not continue to reside at the foreign address on the due date of the 2016 California tax return.

2. Appellant did not timely file his 2016 California return. FTB sent appellant two Payment Received – No Return on File notices stating that FTB received a \$2,000 estimated tax payment for the 2016 tax year but had no record of appellant's 2016 California tax return.
3. On July 2, 2021, appellant filed his 2016 California Nonresident or Part-Year Resident Income Tax Return. The 2016 return showed no tax due and requested that the 2016 estimated tax payment of \$2,000 be applied to appellant's 2017 estimated taxes. FTB accepted the return as filed, which it treated as a claim for refund for the 2016 tax year.
4. FTB denied appellant's claim for refund because appellant failed to file his 2016 return claiming the refund before the statute of limitations expired.
5. 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 overpayment. In the case of a taxpayer residing or traveling abroad, returns should be filed no later than the 15th day of the sixth month following the close of the taxable year. (R&TC, § 18567(a)(2)(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. (*U.S. v. Brockamp* (1997) 519 U.S. 347, 351.) 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.) 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.)

Appellant does not contest – and Office of Tax Appeals (OTA) finds no error in – FTB's determination that his claim for refund was untimely filed and barred by the statute of limitations

under the one-year statute of limitations. In applying the four-year statute of limitations calculated from the original due date of the return, OTA notes that appellant was residing abroad. The record contains no indication that appellant was other than a calendar-year taxpayer or that he resided domestically during the time period at issue. Calendar-year taxpayers residing or travelling abroad must file their returns by June 15, unless the requirements for extension have been fulfilled on or before that date. (R&TC, § 18567(a)(2)(A); FTB Notice 91-3.) As appellant did not timely file his 2016 California return, and therefore did not meet the requirements for extension, appellant had a return filing deadline of June 15, 2017, for the 2016 tax year. Thus, appellant had until June 15, 2021, to file his 2016 claim for refund.<sup>1</sup> However, appellant untimely filed his 2016 claim for refund on July 2, 2021.

Appellant's sole contention on appeal is that FTB erroneously applied his \$2,000 estimated tax payment to the 2016 tax year, when appellant believes the payment should have been applied to the 2017 tax year because it was submitted without a tax return. Appellant further argues that his 2016 claim for refund should be determined to be a timely 2017 claim for refund. However, the record shows that appellant specifically designated the \$2,000 payment for the 2016 tax year. Appellant submitted the \$2,000 payment with a 2016 Form 540-ES. Appellant provides copies of a cancelled check with a memo stating "16 540-ES," which indicates that the payment was to accompany the 2016 Form 540-ES. Following FTB's notices of a \$2,000 overpayment for the 2016 tax year, appellant submitted a 2016 California tax return indicating that a \$2,000 payment was made for 2016 estimated tax. Although appellant may have intended to make the payment for the 2017 tax year, the record shows that the payment was made for the 2016 tax year. Furthermore, we have no authority to grant relief except where the law specifically allows. (See *Appeal of Estate of Gillespie, supra*; *Appeal of Benemi Partners, L.P., supra*.)

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<sup>1</sup> Although the four-year statute of limitations calculated from the extended due date is inapplicable, OTA notes that FTB claims that "if appellant had filed a return by the automatic paperless extension deadline of October 15, 2017, the four-year statute of limitations would have expired October 15, 2021." However, appellant was a taxpayer residing or travelling abroad during the time period at issue, and therefore, the due date for appellant's return was June 15, 2017. Accordingly, the extended due date would have been December 15, 2017, and not October 15, 2017, and therefore the four-year statute of limitations calculated from the extended due date would have expired on December 15, 2021, and not October 15, 2021. (See FTB Notice 91-3.)

HOLDING

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

DISPOSITION

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

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Asaf Kletter  
Administrative Law Judge

Date Issued: 8/8/2022