

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**L. GANDARA**

) OTA Case No. 22029761  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: L. Gandara

For Respondent: Joel Smith, Tax Counsel III

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Gandara (appellant) appeals an action by respondent Franchise Tax Board (FTB) partially denying appellant’s claim for refund in the amount of \$2,950 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.

**ISSUES**

Whether appellant’s remaining claim for refund for the 2016 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. After FTB sent appellant a Demand for Tax Return for the 2016 tax year, and appellant failed to respond, FTB issued a Notice of Proposed Assessment (NPA) on October 21, 2019. The NPA estimated appellant’s income based on third party information reported to FTB, and proposed total tax of \$1,700, penalties, and fees, plus applicable interest.

2. Appellant did not protest the NPA, and the proposed liability became final.
3. Appellant made two payments of \$250.00 on December 11, 2019, and January 27, 2020, ten monthly payments of \$245.00 between February 20, 2020, and November 20, 2020, and a final payment of \$305.82 on November 22, 2021. These payments totaled \$3,255.82.
4. Appellant filed her 2016 California Resident Income Tax Return late on January 15, 2022, reporting zero total tax for the 2016 tax year.
5. FTB accepted appellant's return as filed and treated this return as a claim for refund for the taxes paid for the 2016 tax year. FTB transferred appellant's last payment made on November 22, 2021 (i.e., \$305.82, plus applicable interest) to appellant's 2017 tax year, and on February 7, 2022, denied appellant's remaining claim for refund in the amount of \$2,950.00.
6. 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 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).) 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. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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 filed her 2016 California tax return late on January 15, 2022. While appellant claims on appeal that she filed her 2016 tax return on September 28, 2018, appellant only provides a copy of her 2016 federal tax return which is stamped as received by an IRS field office on September 28, 2018. Appellant has not provided any evidence showing that her 2016 California income tax return was similarly filed with FTB on or about September 28, 2018. FTB does not have a record of receiving appellant's 2016 California tax return in 2018 and in fact sent appellant a Demand for Tax Return and an NPA estimating appellant's California tax in 2019.

Except as discussed in the following paragraph, because appellant's 2016 return (treated by FTB as appellant's claim for refund) was not filed until January 15, 2022, it was not filed within the time limitations set forth in R&TC section 19306. The first four-year statute of limitations period is not applicable because appellant did not file a 2016 California return pursuant to a valid extension of time to file. The second four-year statute of limitations period expired on April 15, 2021, because appellant's 2016 return was originally due on April 15, 2017. (R&TC, § 18566.) Although FTB postponed this deadline (due to Covid-19) to May 17, 2021,<sup>1</sup> appellant did not file her claim for refund until January 15, 2022, almost eight months after this postponed deadline.

Lastly, under the one-year statute of limitations, appellant's claim for refund filed on January 15, 2022, is only timely as to payments made within one year of this date. Thus, appellant is only entitled to a credit or refund for payments made between January 15, 2021, and January 15, 2022. The only payment appellant made within that time period was the \$305.82 payment made on November 22, 2021. This payment, with applicable interest, was credited to appellant's 2017 tax year. Appellant's most recent payment (prior to the \$305.82 payment on November 22, 2021) was made on November 20, 2020. To receive a refund of this payment, appellant's claim for refund needed to be filed within one year of this payment (i.e., on or one year before November 20, 2021). Accordingly, with the exception of the payment of \$305.82 which was credited to appellant's 2017 tax year, appellant's refund claim filed on January 15, 2022, is barred by the statute of limitations.

---

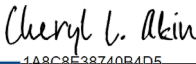
<sup>1</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

HOLDING

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

DISPOSITION

FTB’s action partially denying appellant’s claim for refund for the 2016 tax year is sustained.

DocuSigned by:  
  
1A8C8E38740B4D5...  
Cheryl L. Akin  
Administrative Law Judge

Date Issued: 8/9/2022