

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**J. ALBRECHT**

) OTA Case No. 21108929  
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**OPINION**

Representing the Parties:

For Appellant: C. Albrecht

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Albrecht (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$5,589 for the 2016 taxable year.

Appellant waived his right to an oral hearing; therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellant’s refund claim for the 2016 taxable year was timely filed.

**FACTUAL FINDINGS**

1. Appellant did not file his 2016 California personal income tax return (Form 540) until August 30, 2021. The 2016 Form 540 reflected a \$6,495 overpayment, which appellant wanted applied to his 2017 estimated tax.
2. Appellant’s 2016 tax payments were either made or deemed made on or before April 15, 2017.
3. Appellant’s 2016 Form 540 was due on April 18, 2017.
4. The IRS granted an extension until October 15, 2017, for appellant to file his 2016 federal income tax return.

## DISCUSSION

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) As relevant here, 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; or (2) four years from the original due date for filing a return for the year at issue (determined without regard to any extension of time to file). (R&TC, § 19306.)

In this appeal, appellant did not file his 2016 Form 540, which was due on April 15, 2017 (without considering any extensions), until August 30, 2021, which is also the date of his refund claim. As such, it is clear that appellant's refund claim is untimely because the claim was made beyond the four-year filing deadline (which expired on April 15, 2021). While the consequences of fixed deadlines may be harsh, the occasional harshness is redeemed by the clarity they provide. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223; *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant contends that since the IRS extension changed his "original extended due date" for his 2016 federal tax return to October 15, 2017, the filing of his 2016 Form 540 on August 30, 2021, was less than four years from October 15, 2017, and thus, his refund claim was timely. However, California law is quite specific: R&TC section 19306 clearly requires the taxpayer to file the refund claim within four years of the unextended due date of such return if that return is not filed by the extended due date; the phrase "original extended due date" is not part of R&TC section 19306. Here, appellant filed his 2016 Form 540 outside of the 2016 extended due date and, therefore, his refund claim was required to be filed no later than four years after the original due date without extensions, or April 15, 2021. However, for refund claims due by April 15, 2021, FTB granted an extension of the statute of limitations, and a refund claim is considered timely if the individual taxpayer filed the claim on or before the extension date of May 17, 2021.<sup>1</sup> Appellant filed his claim for refund after that date on August 30, 2021, and therefore, his claim is barred by the statute of limitations.

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<sup>1</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>

HOLDING

Appellant’s refund claim for the 2016 taxable year was untimely filed.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

We concur:

DocuSigned by:  
*Eddy Y.H. Lam*  
1EAB8BD4332477...  
Eddy Y.H. Lam  
Administrative Law Judge

DocuSigned by:  
*Josh Lambert*  
CB1E7DA37831416...  
Josh Lambert  
Administrative Law Judge

Date Issued: 10/17/2022