

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

In the Matter of the Appeal of: )  
L. VARGAS ) OTA Case No. 220310056  
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**OPINION**

Representing the Parties:

For Appellant: Kathleen Roe, CPA

For Respondent: Paige Chang, Tax Counsel

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Vargas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,453.85 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 appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. On July 18, 2019, FTB sent appellant a Request for Tax Return (Request) for the 2016 tax year requesting that appellant file a return, provide a copy of the return if appellant already filed one for the 2016 tax year, or explain why appellant did not have a filing requirement.
2. When FTB did not receive a response to its Request, it issued a Notice of Proposed Assessment (NPA) estimating appellant’s income for the 2016 tax year. The NPA

- proposed total tax of \$2,437, a late filing penalty, and interest.
3. Appellant did not protest the NPA, and the tax, penalties, and interest proposed in the NPA became due and payable.
  4. Appellant subsequently made a series of payments on January 15, 2020, totaling \$3,453.85.
  5. On December 7, 2021, appellant filed a California Resident Income Tax Return reporting total tax of \$0. FTB treated this return as a claim for refund which it denied.
  6. 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 the overpayment. 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 dispute that appellant did not file a timely 2016 California income tax return. As a result, the first four-year statute of limitations period is inapplicable. Appellant's 2016 tax return had an original due date of April 15, 2017. The second four-year statute of limitations expired on April 15, 2021, which FTB postponed to May 17, 2021, due to the ongoing Covid-19 pandemic.<sup>1</sup> Appellant did not file his 2016 tax return (which FTB treated as a claim for refund) until December 7, 2021, which was almost seven months after the postponed deadline of May 17, 2021. Additionally, appellant's payments for the 2016 tax year were made on January 15, 2020. Pursuant to the one-year statute of limitations, appellant's claim for refund needed to be filed within one year of this date (i.e., on or before January 15, 2021) in order to be timely. Because appellant's claim for refund was not filed until December 7, 2021, beyond both the four and one-year statute of limitations periods, it is untimely and barred by the statute of limitations.

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<sup>1</sup> See State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021, available at: <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>.

Appellant’s only argument on appeal is that he was surprised that he had an outstanding balance and thought it would be best to pay the amount on FTB’s notice so that no further action would be taken by FTB. Appellant states that he subsequently decided to prepare and file his 2016 tax return and only then discovered that he had no tax due. However, appellant has failed to explain why he waited until December 2021, to file his 2016 tax return, which is more than four years after this return was due.

Additionally, 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. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Because appellant did not file a timely refund claim within the applicable four or one-year statute of limitations, appellant’s claim for refund for the 2016 tax year is untimely and barred by the statute of limitations.

#### HOLDINGS

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

#### DISPOSITION

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

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*Cheryl L. Akin*  
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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 10/18/2022