

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

In the Matter of the Appeal of:

**T. O'SULLIVAN AND**  
**C. O'SULLIVAN**

) OTA Case No. 22039961  
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**OPINION**

Representing the Parties:

For Appellants:

T. O'Sullivan and C. O'Sullivan

For Respondent:

Joel M. Smith, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. O'Sullivan and C. O'Sullivan (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$3,191.50 for the 2006 taxable year, and \$2,101.87 for the 2007 taxable year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Have appellants established that they are entitled to refunds for 2006 and 2007?

**FACTUAL FINDINGS**

1. Appellants filed their 2006 California Resident Income Tax Return on October 5, 2021, reporting tax due of \$314. FTB accepted the return as filed and assessed penalties, interest, and a collection cost recovery fee. On February 23, 2022, FTB transferred \$590.29 from appellants' 2005 taxable year to pay the remaining balance due for appellants' 2006 taxable year.

2. FTB erroneously issued a Statute of Limitations letter for appellant's 2006 taxable year stating that FTB was denying appellants' claim for refund in the amount of \$3,191.50,<sup>1</sup> which appellants timely appealed.
3. Appellants filed their 2007 California Resident Income Tax Return on October 5, 2021. FTB accepted the return as filed, resulting in an overpayment of \$2,101.87 for appellants' 2007 taxable year.
4. Appellants made payments for the 2007 taxable year between December 10, 2012, and December 15, 2013.
5. FTB issued a Statute of Limitations letter denying appellants' claim for refund for 2007 of the total overpayment amount because the claim was barred by the statute of limitations. 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 to show 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 [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.)

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<sup>1</sup> As indicated in Factual Finding one, appellants did not have an overpayment to refund for taxable year 2006.

Appellants make the same assertions with respect to both 2006 and 2007 taxable years. For both years, appellants assert that they paid their taxes, and due to a fire, are unable to provide records. FTB does not dispute appellants' assertions; rather, FTB states that it erroneously notified appellants that they overpaid for taxable year 2006 although there was no overpayment. Furthermore, FTB asserts that a refund for the overpayment for taxable year 2007 is barred by the statute of limitations.


With respect to taxable year 2006, OTA finds from the evidence in the record that appellants did not overpay their 2006 taxes. FTB issued a statute of limitations letter in error. With respect to taxable year 2007, the first prong of the statute of limitations does not apply because appellants did not file their return within the extended due date. Additionally, appellants failed to file a return before April 15, 2012, when, under the second prong, the statute of limitations expired. Under the final prong, appellants were required to file a claim for refund (here, their return) no later than one year after payment was made, or at least by December 15, 2014 (one year from the date of their final payment for the 2007 taxable year on December 15, 2013). Appellants did not file their return until October 5, 2021, nearly seven years after the final limitations period expired. As there is no reasonable cause or equitable basis to suspend the statute of limitations, OTA finds that appellants are not entitled to a refund for taxable year 2007. Additionally, because appellants did not overpay for taxable year 2006, they are not entitled to a refund for that year.

HOLDING

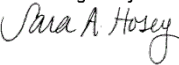
Appellants have not established that they are entitled to refunds for taxable years 2006 and 2007.

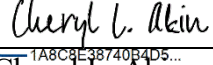
DISPOSITION

Appellants did not have an overpayment for taxable year 2006 and are not entitled to a refund for that year. FTB’s action denying appellants’ 2007 claim for refund is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 9/30/2022