

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

In the Matter of the Appeal of: )  
L. THORPE-CRITTEN ) OTA Case No. 220410219  
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**OPINION**

Representing the Parties:

For Appellant: L. Thorpe-Critten  
For Respondent: Noel Garcia, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. J. Thorpe-Critten (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$12,418 for the 2015 tax year and \$11,707 for the 2016 tax year.

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

**ISSUE**

Whether appellant’s claims for refund for the 2015 and 2016 tax year are barred by the statute of limitations.

**FACTUAL FINDINGS**

1. On September 22, 2021, appellant filed untimely California income tax returns for the 2015 and 2016 tax years claiming the head of household filing status and two dependent exemptions. After applying withholding credits for each year, appellant claimed refunds of \$13,092 for 2015 and \$12,395 for 2016.<sup>1</sup>

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<sup>1</sup> FTB also denied appellant’s claimed dependent exemptions without explanation. As a result, there is a difference between the claimed refund amounts on appellant’s returns and those reflected in FTB’s denials of the claims for refund. This does not affect the outcome of the appeal and will not be discussed further.

2. In letters dated January 18, 2022, FTB notified appellant that it denied appellant's claims for refund because the statute of limitations to file a claim had passed.
3. This appeal followed.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitation 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).) Taxpayers have the burden of proving that the claim for refund is timely and that they are entitled to a refund. (*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.) 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.)

Here, there is no dispute that appellant failed to file timely returns pursuant to an extension of time to file. Appellant's claims for refund for 2015 and 2016 were filed on September 22, 2021, which is more than one year after the claimed overpayments and more than four years after the due date of each return.<sup>2</sup> As such, appellant's claims for refund are barred by the statute of limitations unless an exception applies.

Here, appellant asserts that she should be granted the claims for refund because she is an innocent spouse. Under certain circumstances a joint filer may seek relief from joint and several liability under innocent spouse relief statutes. (IRC, § 6015; R&TC, § 18533.) However, in this

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<sup>2</sup> We note that FTB extended the statute of limitations to file a claim for refund for the 2016 tax year from April 15, 2021, to May 17, 2021. This extension does not affect the outcome of this appeal.

case, there is no joint return. Instead, appellant filed a return claiming the head of household status. Thus, appellant is not eligible for relief from joint and several liability because she is not jointly and severally liable for her former spouse’s tax liability.


While the foregoing is dispositive, OTA notes that even if appellant and her former spouse filed a joint return, the claim for refund would be barred by the statute of limitations. That is because the time limits for filing a claim for refund under R&TC section 19306 apply to claims for refund based on innocent spouse claims. (R&TC, § 18533(e)(3)(A); see *Goldin v. Commissioner*, T.C. Memo. 2004-129.) Accordingly, OTA finds that appellant’s claims for refund for 2015 and 2016 are barred by the statute of limitations.

HOLDING

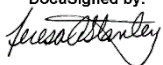
Appellant’s claims for refund for the 2015 and 2016 tax years are barred by the statute of limitations.


DISPOSITION

FTB’s denials of appellant’s claims for refund for the 2015 and 2016 tax years are sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Teresa A. Stanley  
Administrative Law Judge

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Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 10/12/2022