

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

In the Matter of the Appeal of:

**L. LESE AND**  
**J. LESE**

) OTA Case No. 22019563  
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**OPINION**

Representing the Parties:

For Appellants: L. Lese  
J. Lese

For Respondent: Leoangelo C. Cristobal, Tax Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Lese and J. Lese (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$511 for the 2016 tax year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. For the 2016 tax year, appellants had a nonwage withholding credit of \$511.
2. Appellants did not file a timely 2016 California income tax return.
3. In a February 12, 2021 letter, respondent informed appellants that they “may be entitled to nonwage withholding credits in the estimated amount of \$511.00,” however, respondent has “no California income tax return on file . . . .” The letter further informed appellants that respondent may not be allowed to issue a refund if appellants do not respond in a timely manner due to the statute of limitations.

4. On August 10, 2021, appellants untimely filed their 2016 California nonresident or part-year resident income tax return (Form 540NR) reporting overpaid tax of \$511.
5. Respondent treated appellants' 2016 California income tax return as a claim for refund.
6. Respondent denied appellants' claim for refund on the basis that the claim was barred by the statute of limitations.
7. Appellants timely filed this appeal.

### DISCUSSION

The taxpayer has the burden of proof to show that a claim for refund is timely, and the taxpayer is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, *supra*, at fn. 6.)

Since no timely return was filed for the 2016 tax year, the applicable claim for refund statute of limitations here is the later of four years from the last day to file the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) Otherwise, the claim for refund is untimely, and no credit or refund is allowed. (*Appeal of Estate of Gillespie*, *supra*.)

For the 2016 tax year, the four-year statute of limitations period expired on May 17, 2021 (four years from the original due date of April 15, 2017, plus a COVID-19 postponement).<sup>1</sup> (R&TC, § 18566.) Appellants' claim for refund for the 2016 tax year was filed on August 10, 2021. Therefore, appellants filed their claim for refund beyond the four-year statute of limitations period. As for the one-year statute of limitations period, the nonwage withholding credit is deemed paid on the last day prescribed for filing the return, which for the 2016 tax year is April 15, 2017.<sup>2</sup> (R&TC, § 19002(c)(1).) Therefore, the one-year statute of limitations period

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<sup>1</sup> R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. If the statute of limitations to file a timely claim for refund normally expires on April 15, 2021, respondent will consider the claim timely if filed on or before May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

<sup>2</sup> Appellants have not shown that the nonwage withholding credit was paid after the 2016 tax year.

expired on April 15, 2018, before appellants filed their claim for refund on August 10, 2021. Thus, appellants have not met their burden of proving that their claim for refund is timely.

Appellants argue that they did not receive respondent’s letter regarding appellants’ nonwage withholding credit until after the statute of limitations had already expired.<sup>3</sup> However, respondent does not have a duty to inform a taxpayer about an overpayment or the statute of limitations. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Instead, it is appellants’ responsibility to know when the statute of limitations would expire. (*Appeal of Spradlin* (75-SBE-010) 1975 WL 3271.)

### HOLDING


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

### DISPOSITION

OTA sustains respondent’s action.

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Huy “Mike” Le  
Administrative Law Judge

We concur:

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Cheryl L. Akin  
Administrative Law Judge

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Natasha Ralston  
Administrative Law Judge

Date Issued: 12/21/2022

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<sup>3</sup> Although respondent’s letter is dated February 12, 2021, appellants claim, without submitting supporting evidence, that they received the notice after April 15, 2021.