

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

In the Matter of the Appeal of:  
**L. WILLIS**

) OTA Case No. 22039910  
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**OPINION**

Representing the Parties:

For Appellant:

L. Willis

For Respondent:

Phillip C. Klean, Tax Counsel III

For Office of Tax Appeals:

Deborah Cumins,  
Business Taxes Specialist III

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Willis (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,495.65 for the 2012 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant’s claim for refund for the 2012 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2012 California personal income tax return.

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<sup>1</sup> Appellant’s request for appeal refers to the 2012 through 2019 tax years. However, FTB has informed Office of Tax Appeals (OTA) that it has not issued a Notice of Action or Denial of a Claim for Refund for the 2013 through 2019 tax years. Additionally, appellant has not provided OTA with any evidence of refund claims which were filed with FTB and deemed denied by appellant for the 2013 through 2019 tax years under R&TC section 19331. Accordingly, OTA does not have jurisdiction over any disputes for those tax years.

2. FTB received information indicating that appellant had made mortgage payments during 2012. Based on the amount of those payments, FTB concluded that appellant had sufficient income to be required to file a return for 2012.
3. FTB issued both a Request for Tax Return (Request) and Demand for Tax Return (Demand) to appellant for the 2012 tax year.
4. When appellant did not respond to the Request or Demand, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2012 tax year. The NPA estimated appellant's income and proposed to assess tax of \$2,717.00 and a late-filing penalty of \$679.25, plus applicable interest. The NPA became final when appellant failed to timely protest.
5. FTB subsequently issued a Notice of State Income Tax Due, which reflected the amounts of tax and late-filing penalty stated in the NPA (\$2,717.00 and \$679.25, respectively), plus applicable interest.
6. Appellant did not pay the balance due or otherwise respond to the Notice of State Income Tax Due, and FTB initiated involuntary collection action.<sup>2</sup>
7. In total, FTB collected \$1,664.65 between January 20, 2016, and September 6, 2019, which it applied to the balance due for the 2012 tax year.<sup>3</sup>
8. On January 13, 2022, appellant filed his California Nonresident or Part-Year Resident Income Tax Return for 2012. Appellant reported tax of \$169.00, claimed California income tax withholdings of \$354.00, and claimed an overpayment of \$185.00.
9. FTB processed appellant's tax return and treated it as a claim for refund. FTB computed an overpayment of \$1,495.65 (tax of \$169.00 less total withholding and payments of \$1,664.65).

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<sup>2</sup> FTB sent Orders to Withhold Personal Income Tax to appellant's banks, placed a lien on property owned by appellant, and sent a Personal Income Tax Earnings Withholding Order for Taxes to appellant's employer. FTB also sent appellant an Intent to Offset Federal Payments letter, stating that it would submit the debt to the U.S. Treasury Offset Program.

<sup>3</sup> \$354.00 in California income tax was withheld by appellant's employer and was applied to appellant's 2012 tax year on April 15, 2013. FTB then collected payments of \$298.29 on January 20, 2016, \$264.12 on February 3, 2016, \$413.32 on February 17, 2016, and \$8.80 and \$11.00 on September 6, 2019. FTB also transferred overpayment credits of \$104.00 from the 2016 tax year, \$138.09 from the 2017 tax year, and \$73.03 from the 2018 tax year, which were applied to appellant's 2012 tax year account on April 12, 2017, April 21, 2018, and April 18, 2019, respectively.

10. FTB denied appellant's claim for refund as untimely.
11. This timely appeal followed.

### DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall 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 within the extended due date; (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 Benemi Partners, L.P.*, 2020-OTA-144P.) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Ibid.*) 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.*) Federal courts have stated that 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. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

Here, appellant's 2012 California income tax return was due on April 15, 2013. (R&TC, § 18566.) Appellant filed his 2012 return late on January 13, 2022. To determine whether the return, which FTB treated as a refund claim, was timely filed, it is necessary to consider each period identified in R&TC section 19306(a). Since appellant's return was not filed within a valid extension period, the first four-year statute of limitations period is not applicable. The second four-year statute of limitations period expired on April 15, 2017, four years from the original due date of appellant's 2012 return. Since January 13, 2022, is after this date, appellant's late-filed return was not filed within the applicable four-year statute of limitations.

As for the one-year statute of limitations, appellant's last payment for the 2012 tax year was made on September 6, 2019. One year from that date was September 6, 2020. Therefore, appellant is likewise barred under the one-year statute of limitations as his return was filed on January 13, 2022, which is after September 6, 2020. Thus, appellant's 2012 tax return, for which FTB computed an overpayment of \$1,495.65, was not filed within any of the three periods established by statute for filing a timely claim for refund. (See R&TC, § 19306(a).) Appellant's claim for refund is therefore barred by the statute of limitations, and he is not entitled to any refund for the 2012 tax year.

In his request for appeal, appellant asserts that he was wrongfully targeted by FTB. He states that he is on a fixed income and that the amounts in question were collected by FTB to repay a debt he did not owe. Also, in an undated letter appellant provided to FTB, appellant states that he has had so many things happen to him that he is no longer strong and capable.

Appellant does not dispute that his refund claim was filed late; instead, he implies that the statute of limitations should be waived based on extenuating circumstances. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners., L.P., supra.*) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Khan, 2020-OTA-126P.*)

Appellant also implies that the imposition of tax on an inaccurate estimate of income and the collection of funds to pay a debt he did not owe, coupled with the inability to remedy this wrong because of a statute of limitations barrier, is unjust. While OTA understands appellant's perspective, OTA does not have the legal authority to alter the outcome of this matter in a more satisfactory way for appellant. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*)

There is no statutory basis to accept the return filed on January 13, 2022, as a timely claim for refund for the 2012 tax year. Thus, the law prohibits OTA from granting appellant's claim for refund.

HOLDING

Appellant’s claim for refund for the 2012 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund for the 2012 tax year is sustained.

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Cheryl L. Akin  
Administrative Law Judge

We concur:

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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 12/7/2022