

OFFICE OF TAX APPEALS**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

D. GARAY AND

E. GARAY

) OTA Case No. 220410197
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OPINION

Representing the Parties:

For Appellants: D. Garay and E. Garay

For Respondent: Paige Chang, Tax Counsel

For Office of Tax Appeals: Deborah Cumins,
 Business Taxes Specialist III

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Garay and E. Garay (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$1,568.28 for the 2016 taxable 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 in the amount of \$1,568.28 is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants did not timely file their California Resident Income Tax Return for the 2016 taxable year.
2. FTB obtained information reported on a federal Form 1099 from Paypal, Inc. that appellant-husband received income in the amount of \$114,489.00 in 2016. FTB determined that the income was sufficient to prompt a filing requirement for the 2016 taxable year.

3. On May 3, 2018, FTB issued a Request for Tax Return to appellant-husband. Appellants did not respond or file a California income tax return. On July 2, 2018, FTB issued a Notice of Proposed Assessment (NPA) proposing tax of \$7,576 and a late filing penalty in the amount of \$1,894, plus interest. Appellant-husband failed to timely protest the NPA, and it went final.
4. Appellants entered into an installment agreement with FTB and made payments totaling \$3,235.50 toward their 2016 California income tax liability from April 15, 2019, through June 14, 2021.¹
5. FTB issued collection notices to appellant-husband and imposed a collection fee of \$351.00.
6. Appellants filed a 2016 California Resident Income Tax Return on February 1, 2022, reporting total tax of \$236.²
7. FTB treated appellants' return as a claim for refund. FTB reduced appellants' claimed exemptions and revised appellants' total tax to \$469.00, reduced the late filing penalty to \$135.00, and computed an overpayment of \$2,218.89.³ FTB concluded that appellants' claim for refund was timely filed for payments totaling \$650.61.⁴ FTB applied \$652.17 (the \$650.61 overpayment and allowed interest of \$1.56) to appellants' 2017 taxable year.
8. On March 8, 2022, FTB denied appellants' remaining claim for refund of \$1,568.28,⁵ on the basis that appellants had not filed a claim for refund within the applicable statute of limitations.

¹ Two of the payments, made on December 21, 2020, and April 20, 2021, were overpayments from taxable years 2019 and 2020, respectively, that were transferred and applied to appellants' 2016 taxable year.

² Appellants entered a date of January 24, 2022, on the return. However, based on a date entered on the first page, it appears that FTB received the return on February 1, 2022.

³ The overpayment is computed as follows: \$3,235.50 total payments by appellants less tax of \$469.00, a late filing penalty of \$135.00, a collection cost recovery fee of \$317.00, an installment agreement fee of \$34.00, and interest of \$61.61.

⁴ This includes a transfer of \$321.13 from appellants' 2020 taxable year which was applied to appellants' 2016 taxable year account on April 20, 2021, and a payment of \$329.48 made June 14, 2021. Appellants' remaining payments for the 2016 taxable year, were made between April 15, 2019, and December 21, 2020.

⁵ The overpaid tax of \$2,218.89, less \$650.61, which was allowed and credited to appellants' 2017 taxable year.

9. This timely appeal followed.

DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a), (b); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayers have 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.)

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 filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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. (*Appeal of Cornbleth, supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

Because appellants did not timely file their 2016 tax return within the extended filing period, the first four-year statute of limitations period does not apply. As for the second four-year statute of limitations period, appellants' 2016 tax return was due on April 15, 2017. Thus, the second four-year statute of limitations period expired four years later, on April 15, 2021. However, for refund claims due on April 15, 2021, FTB postponed the date for filing until May 17, 2021, because of the COVID-19 pandemic.⁶ Appellants filed their California income tax return for taxable year 2016 on February 1, 2022. Thus, appellants' claim for refund is untimely under the second four-year statute of limitations.

⁶ See <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>.

Appellants claim for refund or credit would be within the the statute of limitation for any payments made within the one-year period prior to filing the claim (i.e., during the period running from February 1, 2021, to February 1, 2022). During this one-year period, appellants made payments totaling \$650.51. FTB has credited this amount to appellants' 2017 taxable year, and no other payments were made within one-year from the date the claim for refund was filed on February 1, 2022.

Appellants' remaining overpayments were made between April 15, 2019, and December 21, 2020. Thus, appellants' claim for refund of \$1,568.28 is barred by the statute of limitations because the payments were made more than one year prior to the date appellants filed their claim for refund. Accordingly, no credit or refund may be made of the \$1,568.28 remaining overpayment.

In their opening brief, appellants acknowledge that a refund of the \$1,568.28 "may" be barred by the statute of limitations. Appellants ask that the overpayment be applied to amounts due for taxable years other than 2016. In its July 5, 2022 brief, FTB responds that payments made prior to February 1, 2021, are not eligible for refund or credit due to the expiration of the statute of limitations.

R&TC section 19306(a) describes the statute of limitations for filing a claim for refund for overpayments of income tax. That section states that, if a claim for refund is not timely filed, no credit or refund shall be allowed. The law prohibits either credits or refunds of overpayments for which the taxpayer has not filed a timely claim for refund. Thus, there is no basis to grant a credit for the overpayment of \$1,568.28.

HOLDING

Appellants’ claim for refund in the amount of \$1,568.28 is barred by the statute of limitations.

DISPOSITION

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

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Cheryl L. Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 12/8/2022