

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

In the Matter of the Appeal of: ) OTA Case No. 21119034  
R. BINDA AND )  
G. BINDA )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Julia Dunbar

For Respondent: Phillip C. Kleam, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Binda and G. Binda (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$14,702.35 and \$1,609.50 for taxable years 2015 and 2016, respectively.<sup>1</sup>

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

**ISSUE**

Is appellants’ claim for refund for taxable year 2015 barred by the statute of limitations?

**FACTUAL FINDINGS**

1. Appellants filed their 2015 California tax return late on July 30, 2021, reporting zero total tax.
2. Prior to this, FTB estimated appellants’ income for the 2015 taxable year and issued a Notice of Proposed Assessment (NPA).<sup>2</sup> FTB proposed to assess \$8,924 in tax, a late-

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<sup>1</sup> On appeal, FTB concedes that appellants’ 2016 claim for refund is timely and states that it will grant a refund of \$1,609. As such, this Opinion does not address the 2016 taxable year.

<sup>2</sup> The NPA was issued to appellant-husband only.

- filing penalty of \$2,231, a demand penalty of \$2,231, a filing enforcement fee of \$84, plus interest.
3. Appellants did not respond to the NPA, which went final. Thereafter, FTB undertook collection activities, which resulted in collections of \$14,702.35.
  4. Collections, payments, and credits for taxable year 2015 occurred between October 4, 2019, and March 1, 2020.<sup>3</sup>
  5. FTB accepted appellants' 2015 tax return as filed, treated it as a claim for refund of \$14,702.35, and denied the claim due to the expiration of the statute of limitations for claiming a refund.
  6. Appellants filed this timely appeal.

### 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 in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*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.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*)

Appellants filed their 2015 tax return late on July 30, 2021, well after the extended due date of October 16, 2016; therefore, just one of the four-year statute of limitations periods is applicable. The due date for filing the return was April 15, 2016, and the statute of limitations

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<sup>3</sup> FTB credited one payment of \$200, made on August 31, 2020, to appellants' 2015 taxable year. FTB then reversed the credit on October 14, 2021, and applied the payment to appellants' 2016 taxable year.


expired four years later (as postponed) on July 15, 2020.<sup>4</sup> Consequently, only payments made within one year prior of the filing date may be refunded. Appellants did not make any payments after July 30, 2020, and FTB does not have authority to refund payments made prior to that date.

HOLDING


Appellants’ claim for refund for taxable year 2015 is barred by the statute of limitations.


DISPOSITION

FTB’s action is modified as conceded, and appellants are entitled to a refund for 2016 of \$1,069.50. Otherwise, FTB’s action for taxable year 2015 is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Josh Lambert  
Administrative Law Judge

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Daniel K. Cho  
Administrative Law Judge

Date Issued: 12/28/2022

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<sup>4</sup> FTB Notice 2022-02 extended the time claims that would otherwise have expired between April 15, 2020, and July 15, 2020, pursuant to COVID-19.