

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**R. LOPEZ AND
C. LOPEZ**

) OTA Case No. 22039898
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OPINION

Representing the Parties:

For Appellants: Samantha Shafia,
Tax Appeals Assistance Program (TAAP)¹
For Respondent: Carolyn S. Kuduk, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Lopez and C. Lopez (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$601 for the 2016 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. In a letter dated February 12, 2021, FTB informed appellants they may be entitled to nonwage withholding credits of \$1,015 for the 2016 tax year, and to claim them appellants should mail a copy of their 2016 California tax return (if one was filed) with supporting documents. In that same letter, FTB also informed appellants that if they wished to obtain a refund or credit of the \$1,015, they must file their 2016 tax return (if one was not filed) within the statute of limitations under R&TC section 19306.

¹ Appellants filed their opening brief. Alexandra Poveda of TAAP filed appellants’ reply brief.

2. On November 3, 2021, appellants untimely filed their 2016 joint California nonresident tax return. They reported tax of \$414, income tax withheld of \$1,015, and requested a refund of \$601.
3. FTB treated appellants' 2016 tax return as a refund claim but denied the claim because it was not filed within the statute of limitations. 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 under 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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellants' untimely filed 2016 tax return had an original due date of April 15, 2017. Due to COVID-19, they had until May 17, 2021, to file a timely refund claim.² However, appellants' refund claim was untimely because they filed their 2016 tax return on November 3, 2021, which was after the May 17, 2021 postponed deadline. Thus, appellants are barred under the second four-year statute of limitations from obtaining a refund.³

As for the one-year statute of limitations, appellants' nonwage withholding payment of \$1,015 is deemed to have been paid on the last day prescribed for filing their 2016 tax return, or April 15, 2017. (R&TC, § 19002(c)(1).) One year from that date was April 15, 2018. Therefore, appellants are likewise barred under the one-year statute of limitations because their refund claim was not filed until November 3, 2021.

Appellants do not dispute this conclusion. Rather, they make several equitable arguments to support they are entitled to their claimed refund. For example, they contend FTB did not timely inform appellants of their nonwage withholding credit of \$1,015 when FTB sent them a

² FTB postponed the deadline for claiming 2016 refunds to May 17, 2021, due to the COVID-19 pandemic. (See *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, April 26, 2021, available at: <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>.)

³ The first four-year statute of limitations is inapplicable because it required appellants to timely file their 2016 tax return by the extended due date of October 15, 2017, which they did not do.

letter on February 12, 2021, which was just three months before the May 17, 2021 deadline to timely claim a refund. Appellants further claim FTB's letter did not properly explain to them they had only three months to obtain a refund. Appellants argue that, as California nonresidents, they have no special training in California tax law and relied on their CPA who provided improper advice. Lastly, appellants state they do not understand why it took FTB four years to inform them they may be entitled to a nonwage withholding credit.

However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) Aside from narrow statutory exceptions not relevant here, 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.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Thus, because appellants did not submit a timely refund claim for the 2016 tax year, they are not entitled to a refund.

HOLDING

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

DISPOSITION

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

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Kenneth Gast

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Kenneth Gast

Administrative Law Judge

We concur:

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Teresa A. Stanley

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Teresa A. Stanley

Administrative Law Judge

DocuSigned by:

Sara A. Hosey

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Sara A. Hosey

Administrative Law Judge

Date Issued: 12/27/2022