

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**H. VAZQUEZ**

) OTA Case No. 220410105  
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**OPINION**

Representing the Parties:

For Appellant: H. Vazquez

For Respondent: Peter Kwok, Tax Counsel IV

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Vazquez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,063.51 for the 2016 tax year.<sup>1</sup>

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. From September 15, 2018, through November 15, 2019, FTB collected a total of \$2,089.01 from appellant for the 2016 tax year since he did not timely file his 2016 California Resident Income Tax Return (Form 540).
2. On February 22, 2022, appellant untimely filed his 2016 tax return, claiming a tax refund of \$1,912.
3. FTB treated appellant’s 2016 tax return as a claim for refund and denied it because appellant failed to claim the refund before the statute of limitations expired.

<sup>1</sup> The amount of \$3,063.51 consist of \$2,089.01 from payments collected by FTB, plus \$1,912.00 from the refund claimed on the 2016 California tax return, less a demand penalty of \$937.50.

4. This timely appeal followed.

#### DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 Estate of Gillespie*, 2018-OTA-052P.)

Appellant's 2016 tax return, which FTB treated as appellant's refund claim, was untimely filed on February 22, 2022. Here, appellant's refund claim is barred by the statute of limitations because he did not file his refund claim within the statute of limitations as set forth in R&TC section 19306(a). The first statute of limitations period is inapplicable because the 2016 tax return was not filed pursuant to a valid extension of time to file. The second statute of limitations period, which expired on May 17, 2021, because of the COVID-19 pandemic, was not met since appellant's 2016 refund claim was not filed until February 22, 2022.<sup>2</sup> Lastly, there is no dispute that the third statute of limitations period expired because there were no overpayments made within one year prior to the claim for refund filed on February 22, 2022.<sup>3</sup>

In appellant's appeal letter, he contends he has shown reasonable cause to obtain a refund because he relied on his tax preparer to timely file his 2016 tax return. However, the language of the statute of limitations must be strictly construed, and there is generally no reasonable cause or equitable basis for suspending the statute of limitations.<sup>4</sup> (*Appeal of Benemi Partners, L.P.*,

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<sup>2</sup> FTB postponed the deadline for claiming 2016 refunds from, as relevant here, April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; FTB, *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 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>.)

<sup>3</sup> The last payment FTB collected from appellant was on November 15, 2019, and appellant's tax withholding payments for the 2016 tax year is deemed to be paid on the due date of the tax return, which here is April 15, 2017, pursuant to R&TC section 19002(c)(1).

<sup>4</sup> There are narrow exceptions where the statute of limitations provisions may be suspended, but appellant has not raised them on appeal and the facts do not support their application here. (See R&TC, § 19316; FTB Technical Advice Memo. 2007-01 (Apr. 23, 2007).)

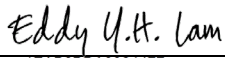
2020-OTA-144P.) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

HOLDING


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


DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
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Andrew J. Kwee  
Administrative Law Judge

Date Issued: 12/27/2022