

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

In the Matter of the Appeal of:  
**R. DUSSAULT**

) OTA Case No. 220510468  
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**OPINION**

Representing the Parties:

For Appellant: R. Dussault

For Respondent: AnaMarija Antic-Jezildzic, Specialist

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, R. Dussault (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,452.91 for the 2016 taxable year.

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 in the amount of \$4,452.91 is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely California Resident Income Tax Return for the 2016 taxable year.
2. FTB obtained information indicating that appellant received sufficient income for 2016 to prompt a return filing requirement.<sup>1</sup> FTB issued appellant a Demand for Tax Return

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<sup>1</sup> For the 2016 taxable year, the filing threshold for a single filer under 65 years of age with no dependents was California gross income of at least \$16,597 or adjusted gross income of at least \$13,278.

- requesting that appellant respond or file a California income tax return. Appellant did not respond or file a tax return.
3. FTB issued a Notice of Proposed Assessment (NPA) estimating appellants income and proposing an assessment of tax, penalties, and interest. Appellant did not respond to the NPA, and it went final. FTB then issued a Notice of State Income Tax Due. Appellant did not respond to the notice, and FTB initiated collection action and imposed a collection cost recovery fee.
  4. FTB received payments totaling \$6,487.26 from appellant through collection action during the period of October 1, 2018, through December 15, 2021, which FTB applied to appellant's 2016 taxable year.
  5. On February 15, 2022, appellant filed his California personal income tax return for the 2016 taxable year, reporting zero tax liability.
  6. FTB accepted the return as filed, waived the penalties and collection fee, and treated the return as a claim for refund. FTB issued a refund to appellant in the amount of \$2,034.35.<sup>2</sup> FTB denied appellant's claim for refund for the remaining overpayment of \$4,452.91 on the basis that appellant had not filed a claim for refund within the statute of limitations.
  7. This timely appeal followed.

### DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law, 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); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(c).)

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<sup>2</sup> This amount included a refund for payments of \$449.69, \$210.66, and \$1,374.00 made on July 6, 2021, October 15, 2021, and December 5, 2021, respectively. Appellant's remaining payments for the 2016 taxable year were made between October 1, 2018, and July 15, 2020.

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. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) If a taxpayer fails to file a claim for refund within the statute of limitations, the taxpayer is barred from later filing a claim for 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.)

In this appeal, appellant's return was due on April 18, 2017. Appellant's return, which is also his claim for refund, was not filed until February 15, 2022. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable here because appellant did not file a return within the extended filing period. The second four-year statute of limitation period to file a claim for refund expired on April 18, 2021. However, FTB postponed the date for individual taxpayers to file a claim for refund for taxable year 2016 until May 17, 2021, because of the COVID-19 pandemic.<sup>3</sup> Appellant's claim for refund was not filed until February 15, 2022, and is therefore untimely under the second four-year statute of limitations period.

With respect to the final period described in R&TC section 19306(a), FTB has issued a refund of the three payments made during the one-year period from February 15, 2021, through February 15, 2022. No other payments were made within the one-year statute of limitations period.<sup>4</sup> For the remaining payments of \$4,452.91 made outside the one-year period, appellant's claim for refund is barred by the statute of limitations and no refund may be made.

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<sup>3</sup> 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>.

<sup>4</sup> Appellant's remaining payments for the 2016 taxable year were made between October 1, 2018, and July 15, 2020, outside of the one-year statute of limitations period.

Appellant does not dispute that his refund claim was filed late. Appellant explains that the delay was due to ongoing personal difficulties. While Office of Tax Appeals (OTA) is sympathetic to appellant's circumstances, the law does not permit for the waiver of the statutory period based on reasonable cause. 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 Benemi Partners, L.P., supra; Appeal of Khan, 2020-OTA-126P.*) Thus, even when, as here, FTB based its tax assessment on an estimated amount of income that was later proved to be inaccurate, there is no recourse to refund taxes paid when the claim for refund is untimely. This is because, without a timely refund claim, FTB does not have the statutory authorization to refund amounts paid and OTA does not have statutory authorization to require FTB to do so. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*)

#### HOLDING

Appellant's claim for refund in the amount of \$4,452.91 is barred by the statute of limitations.

#### DISPOSITION

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

DocuSigned by:

*Veronica I. Long*

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Veronica I. Long  
Administrative Law Judge

We concur:

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*Josh Lambert*

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Josh Lambert  
Administrative Law Judge

DocuSigned by:

*Asaf Kletter*

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Asaf Kletter  
Administrative Law Judge

Date Issued: 12/28/2022