

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. SANCHEZ

) OTA Case No. 22019446
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OPINION

Representing the Parties:

For Appellant: S. Sanchez

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Steven Kim, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Sanchez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,045.35 for the 2016 tax year.

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

ISSUE

Whether appellant is due any additional credit or refund for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2016 tax year.
2. In 2018, FTB issued a Demand for Tax Return (Demand) to appellant, followed by a Notice of Proposed Assessment (NPA), which went final.
3. FTB subsequently initiated collection action. On May 27, 2020, FTB transferred a credit of \$760.35 from the 2019 tax year to the 2016 tax year.

4. In 2020, appellant established an installment agreement for the 2016 tax year and made the following installment payments totaling \$490: a \$60 payment on March 22, 2021, April 20, 2021, May 20, 2021, and June 21, 2021; and a \$250 payment on November 22, 2021.
5. Appellant filed his 2016 California income tax return on December 7, 2021, reporting tax of \$1,792 and an overpayment of \$319 (after tax withholdings of \$2,111), which he claimed as a refund.
6. FTB accepted appellant's return as a refund claim and, after allowing a credit of \$490.26¹ which FTB transferred to a deficiency for the 2017 tax year, denied \$1,045.35 of appellant's refund claim for being untimely.²
7. This timely appeal followed.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that no credit or refund may be allowed unless a refund claim 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

If FTB finds there has been an overpayment of any liability by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount then due from the taxpayer. (R&TC, § 19301(a).) When a taxpayer makes an overpayment for any year and the taxpayer owes a deficiency for another year, the overpayment (if the statute of limitations to file a claim a refund has not expired) shall be credited on the deficiency (if the statute of

¹ The allowed credit is comprised of \$490.00 in installment payments made within one year of filing the refund claim, plus \$0.26 as interest allowance.

² The denial amount is the difference between disallowed payments (\$2,111.00 withholding credits plus \$760.35 transfer from 2019 tax year), on one hand, and the tax liability of \$1,792 plus a \$34 fee, on the other.

limitations to propose a deficiency assessment has not expired),³ and any balance shall be credited or refunded to the taxpayer. (R&TC, § 19108(a).)

FTB partially allowed the refund claim by transferring all payments made within one year of filing the refund claim—the \$490.00 in installment payments—to the 2017 tax year. The issue on appeal is whether appellant is entitled to a full or partial refund of (1) the \$2,111.00 in withholding payments or (2) the \$760.35 that FTB transferred from the 2019 to the 2016 tax year. As discussed below, appellant is not entitled to a credit or refund of any amount.

For the 2016 tax year, FTB postponed the four-year statute of limitations period for individual taxpayers to file a refund claim to May 17, 2021, because of COVID-19.⁴ Appellant filed his refund claim on December 7, 2021, after the four-year statute of limitations expired.

With respect to the one-year statute of limitations, FTB transferred all payments made within one year of the refund claim to a deficiency for the 2017 tax year (the \$490 installment payments noted above). Appellant's other payments were made before December 7, 2020, the one-year period. Specifically, the withholding payments are deemed paid on the original due date of the 2016 return, which was April 15, 2017, and FTB transferred the credit from the 2019 tax year on May 27, 2020. (R&TC, §§ 18566, 19002(c)(1); Cal. Code Regs., tit. 18, § 18566.)

Accordingly, appellant is not entitled to any other credit or refund for the 2016 tax year.

³ To be considered timely, a notice of proposed deficiency assessment must be mailed to the taxpayer on or before the later of four years after the return was filed or four years after the original due date of the return. (R&TC, § 19057.)

⁴ <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>.

HOLDING

Appellant is not entitled to any additional credit or refund for the 2016 tax year.

DISPOSITION

FTB’s action is sustained.

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:



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Josh Aldrich
Administrative Law Judge

DocuSigned by:



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Richard Tay
Administrative Law Judge

Date Issued: 1/27/2023