

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

In the Matter of the Appeal of:  
**M. FRANCE**

) OTA Case No. 21119161  
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**OPINION**

Representing the Parties:

For Appellant:

M. France

For Respondent:

Camille Dixon, Tax Counsel

For Office of Tax Appeals:

Tim Tamminga, Graduate Student Assistant

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. France (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$2,194 for the 2015 tax year.<sup>1</sup>

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

**ISSUE**

Whether the statute of limitations bars appellant's claim for refund.

**FACTUAL FINDINGS**

1. Appellant untimely filed her 2015 California Income Tax Return on October 15, 2021. On her return, appellant reported no tax liability and withholding credits totaling \$2,194, resulting in an overpayment of the same amount.

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<sup>1</sup> Although appellant lists tax years 2015 through 2021 as the years at issue in her appeal letter, OTA only has in the record respondent's claim for refund denial for the 2015 tax year. Respondent informed OTA that it has not issued a Notice of Action or a Denial of Claim for Refund for the 2016 through 2021 tax years. Also, appellant has not claimed that respondent failed to act within six months on any potential claims for refund for the 2016 through 2021 tax years. (See R&TC, § 19331; Cal. Code Regs., tit. 18, § 30103(a)(4).) Therefore, OTA's jurisdiction is limited to the 2015 tax year.

2. Subsequently, respondent notified appellant that the statute of limitations barred her claim for refund of \$2,194.
3. Appellant timely filed this appeal.

### DISCUSSION

Since appellant did not file a timely return, the applicable claim for refund statute of limitations here is the later of four years from the last day to file the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2015 tax year, the four-year statute of limitations period expired on July 15, 2020 (four years from the due date of April 15, 2016, plus a COVID-19 State of Emergency postponement).<sup>2</sup> 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.)

There is no reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Estate of Gillespie*, *supra*.) A taxpayer's untimely filing of a refund 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.*)

As to the four-year statute of limitations period, appellant filed her claim for refund on October 15, 2021, well beyond the expiration of the statute of limitations on July 15, 2020. As to the one-year statute of limitations period, appellant made a payment through a withholding credit, which is deemed paid on the return due date of April 15, 2016. (R&TC, § 19002.) Thus, since appellant filed her refund claim on October 15, 2021, over one year after the date of the overpayment, this overpayment is barred under the statute of limitations.<sup>3</sup>

Appellant claims that she sent in her 2015 return twice electronically and by mail "twice in 2015." However, appellant submitted no evidence to support her assertions. In addition, appellant makes other reasonable or equitable arguments. However, as noted above, there is no

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<sup>2</sup> R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. Where an applicable statute of limitations to file a timely claim for refund expires during the period of March 12, 2020, through July 15, 2020, respondent will consider the claim timely if filed on or before July 15, 2020. (FTB Notice 2020-02 (March 30, 2020), available at <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.)

<sup>3</sup> Appellant also alleges that she is homeless and on disability; however, she has not submitted any evidence to show that she is "financially disabled," as defined in R&TC section 19316.


reasonable or equitable basis for suspending the statute of limitations. Appellant also refers to the IRS in her appeal but the IRS is separate and distinct from respondent. The IRS administers the federal income tax while respondent administers the California income tax. Therefore, appellant has not proven that her claim for refund was timely.

HOLDING


The statute of limitations bars appellant’s claim for refund.

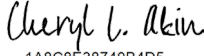
DISPOSITION

OTA sustains respondent’s denial of appellant’s claim for refund.

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Huy “Mike” Le  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 3/10/2023