

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

In the Matter of the Appeal of:

**A. GREENBOIM AND**  
**M. GREENBOIM**

) OTA Case No. 220510482  
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**OPINION**

Representing the Parties:

For Appellants:

Andrea Dalrymple, CPA, MBA

For Respondent:

Paige Chang, Tax Counsel

For Office of Tax Appeals:

Amber Poon, Graduate Legal Assistant

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Greenboim and M. Greenboim (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,839 for the 2016 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants’ claim for refund for the 2016 tax year is barred by the statute of limitations.

### FACTUAL FINDINGS

1. On January 30, 2018, appellants filed their 2016 tax return. On the return, appellants reported total tax of \$3,839, withholding credits of \$10,672, and an overpayment of \$6,833 which FTB refunded to appellants.
2. On or about February 8, 2022, appellants filed an amended 2016 tax return, reporting a net operating loss (NOL) carryback from the 2018 tax year and requesting a refund of \$3,839.
3. On March 1, 2022, FTB denied appellants' claim for refund of \$3,839 due to the expiration of the statute of limitations.
4. This timely appeal followed.

### DISCUSSION

No credit or refund may 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 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).) For purposes of R&TC section 19306, withholding credits are treated as paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1).) In a claim for refund, taxpayers have the burden of proof to show that a refund is warranted and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) If the taxpayers fail to file a claim for refund within the statute of limitations, the taxpayers are barred from later filing a claim for refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Here, appellants failed to file their 2016 return by the extended due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year statute of limitations period is inapplicable. The second four-year statute of limitations period runs from the original due date of appellants' 2016 return. (R&TC, § 19306(a).) For the 2016 tax year, the second four-year statute of limitations expired on April 15, 2021, which is four years from the April 15, 2017 due date of the return. (R&TC, § 18566.) Due to the Covid-19 pandemic, under

the second four-year statute of limitations, a refund claim would be considered timely if it was filed on or before the postponement date of May 17, 2021.<sup>1</sup> Appellants, however, filed an amended return for the 2016 tax year on or about February 8, 2022,<sup>2</sup> which is beyond the second four-year statute of limitations period prescribed in R&TC section 19306, as postponed by FTB.

With regard to the one-year statute of limitations, appellants' payments for 2016 were withholding credits deemed to be paid as of the due date of the return, or here April 15, 2017. A claim for refund of the withholding credits would be timely if filed within one year from the date the withholding credits are deemed paid. Thus, to be within the one-year statute of limitations, appellants' claim for refund needed to be filed on or before April 15, 2018. But appellants' claim for refund filed on or about February 8, 2022, is well beyond the one-year statute of limitations prescribed in R&TC section 19306(a).

Appellants contend that, as the NOL carryback was incurred in 2018, the statute of limitations for the 2016 claim for refund should expire on October 15, 2023, four years from the extended due date of appellants' 2018 tax return. Appellants' contention is based on a misunderstanding of the statute of limitations for federal and California purposes. For federal purposes, if a claim for credit or refund relates to an overpayment attributable to an NOL carryback, taxpayers may file a claim for refund within three years after the time prescribed by law for filing the federal tax return for the taxable year of the NOL which results in the carryback. (Internal Revenue Code (IRC), § 6511(d)(2).) However, California does not conform to IRC section 6511, and does not have a special statute of limitations provision for refunds resulting from NOL carrybacks. (See, e.g., R&TC, § 19312 [providing an alternative statute of limitations period where an overpayment relates to worthless debts or securities].) For California purposes, the statute of limitations is based on the filing of/filing deadline for the tax return for the tax year for which the refund is being requested. (R&TC, § 19306(a).)

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<sup>1</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>2</sup> On appeal, appellants assert that their amended return was filed in January 2022. FTB counters that the amended return was filed on February 8, 2022, based on a date written on the top of return. However, the use of either date does not alter the disposition of this case.


Here, that is appellants' 2016 tax year.<sup>3</sup> As discussed above, appellants' claim for refund for the 2016 tax year is untimely.

HOLDING

Appellants' claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

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

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 3/1/2023

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<sup>3</sup> As correctly noted by appellants, the extended filing deadline for the 2018 tax year was October 15, 2019. However, the four-year statute of limitations for the 2016 tax year under R&TC section 19306(a) generally would not expire until sometime in 2021. Thus, assuming a taxpayer files a timely return for the 2018 tax year in 2019, there would be sufficient time to file a claim for refund for the 2016 tax year (claiming an NOL carryback from 2018) under either the first or second four-year statute of limitations provided in R&TC section 19306(a).