

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. GRIFFIN

) OTA Case No. 220410172
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OPINION

Representing the Parties:

For Appellant: Deborah Conwell, Representative

For Respondent: Camille Dixon, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Griffin (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,813 for the 2016 tax 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 is barred by the statute of limitations.

FACTUAL FINDINGS

1. During the 2016 tax year, appellant and appellant’s daughter sold real property in California.
2. For the 2016 tax year, FTB received a nonwage withholding payment of \$7,626. The California Form 593, Real Estate Withholding Statement provided to FTB listed both appellant and her daughter as sellers of the property. As such, FTB applied half of the nonwage withholding (i.e., \$3,813) to appellant and the other half to her daughter.

3. FTB did not have a 2016 California tax return in its records for appellant. Therefore, FTB issued a Nonwage Withholding Credits - No Tax Return on File notice to appellant notifying her of the available credit of \$3,813.¹
4. On April 8, 2021, FTB received appellant's daughter's (not appellant's) untimely 2016 California Nonresident or Part-Year Resident Income Tax Return (Nonresident Return), on which appellant's daughter claimed the entire \$7,626 withholding credit. However, FTB denied \$3,813 of the claimed withholding credit since half of the withholding credit belonged to appellant.
5. On September 8, 2021, appellant's daughter called FTB and asked about the status of appellant's refund. Appellant's daughter initially stated to FTB that she sent appellant's 2016 Nonresident Return to FTB, along with her own tax return. Appellant's daughter later stated to FTB that she claimed "all" of the California "income" on her own tax return, not on appellant's tax return.
6. On October 4, 2021, FTB received appellant's untimely 2016 Nonresident Return, claiming a refund of the \$3,813 nonwage withholding credit. Appellant's 2016 Nonresident Return is signed, but not dated.
7. FTB processed appellant's Nonresident Return, but denied appellant's claim for refund due to the expiration of the statute of limitations.
8. 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 language of the statute of limitations is explicit and strictly construed. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from receiving the refund at a later date. (*Ibid.*) The taxpayer has the burden of

¹ FTB issued a similar notice to appellant's daughter.

proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant's refund claim is barred by the statute of limitations because she did not file her 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 appellant's 2016 Nonresident Return was untimely filed and therefore not filed pursuant to a valid extension of time to file. The second statute of limitations period expired on April 15, 2021, four years from the original due date of April 15, 2017, for appellant's 2016 Nonresident Return. FTB postponed this deadline until May 17, 2021, due to COVID-19.² Appellant's claim for refund was not filed until October 4, 2021, which is after the postponed deadline of May 17, 2021. With respect to the third statute of limitations period, appellant's only payment towards her 2016 tax year account is nonwage withholdings, which are deemed to be paid on the original due date of appellant's 2016 Nonresident Return. (R&TC, § 19002(c)(1).) Appellant's 2016 Nonresident Return was due on April 15, 2017; therefore, in order to be filed timely under this third statute of limitations period, appellant's claim for refund needed to be filed on or before April 15, 2018.

On appeal, appellant asserts that she timely mailed her 2016 Nonresident Return in the same envelope as her daughter's 2016 Nonresident Return, which FTB received on April 8, 2021. Appellant also asserts that she complied with FTB's advice and promptly resubmitted all required material.

However, appellant's assertions are unconvincing for two reasons. First, while appellant asserts that her return was mailed in the same envelope as her daughter, appellant has not provided any evidence to substantiate this assertion. Here, there are no evidence in the record, such as a copy of a certified mailing receipt, to support the fact that appellant's 2016 Nonresident Return was mailed within the statute of limitations for claim for refund. Second, while appellant asserts that her 2016 Nonresident Return was mailed in the same envelope with her daughter's 2016 Nonresident Return, this assertion is contradicted by the evidence in the record. Here, appellant's daughter's 2016 Nonresident Return claimed the entire \$7,626 withholding credit, suggesting that her daughter filed a single return claiming the entire amount of the withholding

² FTB postponed the deadline for claiming 2016 refunds from, as relevant here, April 15, 2021, to May 17, 2021, due to COVID-19. (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> .)

credit and that it was only upon learning that her daughter’s refund claim was partially denied that appellant then filed a separate 2016 Nonresident Return for the remaining withholding credit. Moreover, the facts in this present appeal do not support appellant’s assertion that she mailed her 2016 Nonresident Return in the same envelope with her daughter’s 2016 Nonresident Return. Therefore, appellant’s unsubstantiated assertions regarding the mailing of her 2016 Nonresident Return are insufficient to satisfy appellant’s burden of proof to show that her claim for refund was timely. (*Appeal of Estate of Gillespie, supra.*)

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
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Eddy Y.H. Lam
Administrative Law Judge

We concur:
DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Cheryl L. Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 4/12/2023