

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

In the Matter of the Appeal of:  
**G. BERMUDEZ**

) OTA Case No. 221011551  
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**OPINION**

Representing the Parties:

For Appellant:

G. Bermudez

For Respondent:

Alisa L. Pinarbasi, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Bermudez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$8,621.76 for the 2017 tax year.

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

**ISSUE**

Whether appellant timely filed a claim for refund for the 2017 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2017 return.
2. FTB received information that appellant received income sufficient to prompt a filing requirement for the 2017 tax year and issued a Demand for Tax Return to appellant. Appellant did not respond.
3. FTB issued a Notice of Proposed Assessment (NPA) to appellant estimating appellant’s income as \$94,258.00 and allowing a standard deduction of \$4,236.00. The NPA proposed tax of \$5,613.00, a late filing penalty of \$1,403.25, a demand penalty of \$1,403.25, and a filing enforcement fee of \$93.00. Appellant did not respond to the NPA.

4. FTB issued a Final Notice Before Levy and Lien to appellant. Appellant did not respond. FTB imposed a collection fee of \$316.00 and took collection action. FTB received a payment of \$65.29 on December 16, 2020, a payment of \$8,797.76 on March 10, 2021, and a payment of \$1,132.45 on April 19, 2021.
5. Appellant untimely filed a 2017 return on August 9, 2022, reporting total tax of \$566.00. Payments on appellant's account totaled \$9,996.87, resulting in an overpayment of \$8,621.76.<sup>1</sup>
6. FTB treated the return as a claim for refund and denied the claim.
7. This timely appeal followed.

### DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer 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).) The taxpayer has the burden of proof to show that he or she is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

R&TC section 19306(a) provides, in part, 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 filed within the extended due date; (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. 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 him or her from receiving the refund at a later date. (*Ibid.*)

Here, because appellant did not file a 2017 return by the extended due date, appellant was required to file a refund claim no later than April 15, 2022, which is four years from the original due date of the return. Under the alternative one-year statute of limitations for the final payment, appellant was required to file the refund claim no later than April 19, 2022, which is one year from the date the final payment was received.

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<sup>1</sup> \$9,996.87 (total payments) - \$566.00 (tax) - \$141.50 (late payment penalty) - \$141.50 (demand penalty - \$117.11 (interest) - \$93.00 (filing enforcement fee) - \$316.00 (collection fee) = \$8,621.76.

Appellant contends that he should receive a refund because he filed the claim within two years of the final payment. However, the law provides that a claim must be made within one year of the date of overpayment for a refund to be made. There is no reasonable cause exception or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The result of fixed deadlines may appear harsh, but the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Without a legislatively enacted exception to the statute of limitations, the Office of Tax Appeals cannot abate a seemingly unfair or harsh outcome. (*Appeal of Estate of Gillespie, supra.*) Accordingly, because appellant did not timely file a refund claim under the statute of limitations for 2017, appellant’s refund claim is barred.

HOLDING

Appellant did not timely file a claim for refund for the 2017 tax year.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:

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*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

Date Issued: 4/14/2023