

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

In the Matter of the Appeal of:  
**J. MARTIN**

) OTA Case No. 220610646  
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**OPINION**

Representing the Parties:

For Appellant: J. Martin

For Respondent: Brian Werking, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Martin (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$4,077 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 filed a timely claim for refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. On March 15, 2018, respondent sent appellant a Request for Tax Return for the 2016 tax year. It notes that appellant has “an excellent history of filing [her] annual tax returns.” However, respondent did not receive appellant’s 2016 return. Respondent stated that it had information from the State of California’s Controller’s Office indicating that appellant had a California filing requirement. As such, respondent requested that appellant file a 2016 return, provide evidence that a 2016 return was filed, or provide information that appellant did not have a filing requirement for the 2016 tax year. Respondent did not receive a response from appellant.

2. Respondent issued a Notice of Proposed Assessment and estimated appellant's income as \$65,791.00 and, after applying the standard deduction of \$4,129.00, taxable income as \$61,662.00. Respondent calculated appellant's total tax to be \$3,162.00. After applying exemption credits of \$111.00 and withholding credits of \$225.00, respondent proposed additional tax of \$2,826.00 and imposed a late filing penalty of \$706.50, plus applicable interest.
3. Respondent took involuntary collection actions and imposed a collection cost recovery fee of \$317.00. Respondent received a payment of \$4,178.45 on June 15, 2019, which satisfied the balance due.
4. On March 15, 2022, appellant filed a 2016 return and reported California adjusted gross income of \$65,241 and, after applying itemized deductions of \$28,391, a taxable income of \$36,850. Appellant reported a total tax of \$0 and withholding credits of \$207 and requested a refund of \$207.
5. Respondent accepted the return as filed and reduced the late filing penalty to \$0.00. Appellant's 2016 account reflected an overpayment of \$4,076.91.<sup>1</sup> However, respondent did not refund the overpayment stating that a claim for refund was not timely filed under the statute of limitations.
6. 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 will be refunded to the taxpayer. (R&TC, § 19301(a).) However, no credit or refund is 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 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. (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

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<sup>1</sup> The difference between the amount stated on the 2016 account (\$4,076.91) and the amount at issue in this appeal (\$4,077.00) is due to rounding.

refund, for whatever reason, within the statutory period bars her or him from receiving the refund at a later date. (*Ibid.*)

Here, appellant was required to file a 2016 return by April 15, 2017. Appellant did not file her return, which respondent accepted as a claim for refund, until March 15, 2022, approximately four years and 11 months after the original return due date.<sup>2</sup> Under the alternative one-year statute of limitations, appellant was required to file a refund claim no later than June 15, 2020, which is one year from the date of the overpayment. Appellant’s return was filed approximately one year and nine months after the one-year deadline. Therefore, appellant’s claim for refund is time barred.

Appellant does not argue that she filed the 2016 California tax return within the prescribed time periods as set forth in R&TC section 19306. Rather, it appears that appellant’s argument is equitable in nature. Appellant recounts the upheavals she experienced since 2016, throughout which she demonstrated remarkable resilience.

The time period for filing a claim for refund may be suspended if a taxpayer is “financially disabled,” as defined by R&TC section 19316. A taxpayer is “financially disabled” if she or he is unable to manage her or his financial affairs due to a medically determinable physical or mental impairment that is expected to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316(b)(1)-(2).) To establish financial disability, the taxpayer must file FTB Form 1564, which requires (among other things) a physician affidavit of physical or mental impairment. (See R&TC, § 19316(a) [financial disability is established in accordance with the procedures and requirements specified by respondent].) The period of financial disability must occur during the limitations period. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Respondent states that it explained to appellant in an email how to claim financial disability, which is by completing FTB Form 1564. With its opening brief before the Office of Tax Appeals (OTA), respondent also includes FTB Form 1564 and respondent’s contact information in the event appellant had any questions or concerns. Respondent states that it did not receive a response. Although OTA is sympathetic to appellant’s situation, without the

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<sup>2</sup> Following the IRS, respondent postponed the four-year statute of limitations for claiming a refund from April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See R&TC, § 18572; Franchise Tax Board, *State Postpones Deadline for Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021) <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>.) Appellant’s 2016 return was also filed outside of the May 17, 2021 deadline.

additional evidence that respondent requires, OTA cannot determine whether appellant is financially disabled under the law.

Courts have held that while fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*U.S. v. Boyle* (1985) 469 U.S. 241, 249; *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84.) In this case, without a timely refund claim, appellant’s claim for refund is barred by the statute of limitations.

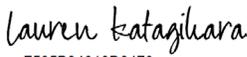
HOLDING

Appellant did not file a timely claim for refund for the 2016 tax year.

DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:  
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Lauren Katagihara  
Administrative Law Judge

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Amanda Vassigh  
Administrative Law Judge

Date Issued: 5/15/2023