

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. REMINGTON**

) OTA Case No. 221212056  
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**OPINION**

Representing the Parties:

For Appellant: R. Remington

For Respondent: Josh Ricafort, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Remington (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,060 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 May 10, 2018, respondent sent appellant a Request for Tax Return (Request) for the 2016 tax year. The Request notes that appellant has “an excellent history of filing [his] annual tax returns.” However, respondent did not receive appellant’s 2016 tax return. The Request states that respondent received information from a third party that led respondent to believe that appellant had a California filing requirement. As such, the Request asks that appellant file a 2016 return, provide evidence that a 2016 return had already been 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 based on an estimate of appellant's income. When the balance remained unpaid, respondent commenced collection action but did not receive any payment.
3. On October 5, 2022, appellant ultimately filed a 2016 California tax return and reported total tax of \$1,932, income tax withholdings of \$3,343, and an overpayment of \$1,411.
4. Respondent accepted the return as filed, which it treated as a claim for refund, but recalculated appellant's overpayment to be \$1,060.<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.
5. 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).) For purposes of the one-year statute of limitations for refund claims, any tax deducted and withheld during any calendar year is deemed to have been paid on the original filing deadline for that tax year. (R&TC, § 19002(c)(1).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Here, appellant untimely filed a 2016 tax return on October 5, 2022. Therefore, the first four-year statute of limitations is inapplicable. To claim a timely refund under the second four-year statute of limitations, appellant had to file the return four years from the original due date of

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<sup>1</sup> Respondent provides a copy of appellant's 2016 account, which shows a debit for an installment agreement fee of \$34 and a collection cost recovery fee of \$317. This accounts for the difference between appellant's and respondent's overpayment calculation.

the return, which was April 15, 2021, but postponed to May 17, 2021.<sup>2</sup> Appellant did not file the 2016 return within the second four-year deadline. Under the alternative one-year statute of limitations, appellant must have filed the refund claim no later than April 15, 2018, which is one year from when appellant's California income tax withholdings were deemed to have been paid (i.e., April 15, 2017) under R&TC section 19002(c)(1). Accordingly, appellant's claim for refund also falls outside of the one-year deadline.

Appellant does not argue that he filed the 2016 California tax return within the prescribed time periods as set forth in R&TC section 19306(a). Rather, appellant's argument is equitable in nature. Appellant recounts medical and mental health issues beginning in 2015.

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 he or she is unable to manage his or her financial affairs due to a medically determinable physical or mental impairment that is either deemed 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. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; 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*, *supra*.)

With its opening brief filed with the Office of Tax Appeals (OTA), respondent includes FTB Form 1564 and invites appellant to submit additional documentation for appellant to properly claim financial disability for respondent's consideration. There is no indication that appellant has provided this completed form to respondent. Although OTA is sympathetic to appellant's situation, without the additional evidence that respondent requires, OTA cannot determine whether appellant is financially disabled under the law.

OTA cannot overlook the untimeliness of a taxpayer's refund claim and can only grant relief where the law specifically allows. (See *Appeal of Xie*, 2018-OTA-076P.) The taxpayer's

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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 after the May 17, 2021 deadline.

failure to file a claim for refund within the statute of limitations, for any reason, bars him or her from later receiving a refund. (*Appeal of Estate of Gillespie, supra.*) The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., 2020-OTA-144P.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) For the reasons described above, appellant’s claim for refund is not allowed under the statute of limitations described in R&TC section 19306(a).

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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Suzanne B. Brown  
Administrative Law Judge

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Kenneth Gast  
Administrative Law Judge

Date Issued: 5/31/2023