

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. SIMMONS

) OTA Case No. 220810984
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OPINION

Representing the Parties:

For Appellant: P. Simmons

For Respondent: Paige Chang, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Simmons (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$660 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 for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant filed her 2016 California tax return late on May 9, 2022, reporting total tax of \$1,956, tax withholdings of \$2,616, and claiming a refund of \$660.
2. On June 27, 2022, FTB denied appellant’s refund claim on the basis that the refund is barred by the statute of limitations.
3. This timely appeal followed.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations provides that no credit or refund may be allowed unless a refund claim 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Gillespie*, 2018-OTA-052P.)

Appellant contends that she should receive her refund because she “went through several years of hardship,” she “was in between housing and had a hard time locating [her] paperwork,” and she “also needed a tax professional.” While the Office of Tax Appeals (OTA) is sympathetic to appellant’s situation, there is no equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*)

Appellant’s refund claim is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. The first statute of limitations period is not applicable because appellant did not timely file her 2016 California tax return within the extension period. The second statute of limitations period expired on May 17, 2021, for the 2016 tax year.¹ Lastly, the third statute of limitations period expired on April 15, 2018, because appellant’s withholding credit was deemed paid on the due date of the return, April 15, 2017. (R&TC, § 19002(c)(1).) Appellant filed her refund claim on May 9, 2022, after all three statute of limitations periods expired. Accordingly, appellant’s refund claim is barred by the statute of limitations.²

¹ For the 2016 tax year, the second statute of limitations period expired on April 15, 2021, four years from the date appellant’s 2016 return was due, determined without regard to any extension of time to file. However, due to the COVID-19 pandemic, FTB treated refund claims filed by May 17, 2021, as timely. (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>.)

² While the time for filing a claim for refund may be suspended if a taxpayer is “financially disabled,” as defined in R&TC section 19316, there is no evidence in the record establishing that appellant was financially disabled at any relevant time. Therefore, OTA does not address this issue.

HOLDING

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained.

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

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

Date Issued: 6/27/2023