

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

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

) OTA Case No. 221111795  
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**OPINION**

Representing the Parties:

For Appellant: J. Salcido

For Respondent: Josh Ricafort, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Salcido (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$7,722.20 for the 2007 tax year.

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

**ISSUE**

Whether the statute of limitations bars appellant’s claim for refund or credit for the 2007 tax year.

**FACTUAL FINDINGS**

1. Through FTB’s Integrated Non-Filer Compliance program, FTB obtained Form 1098 information, which indicated that appellant made mortgage interest payments to various lenders, such as Bank of America N.A. and Wachovia Mortgage FKA World Savings for the 2007 tax year. However, FTB’s records indicated that appellant had not filed a 2007 California tax return.
2. FTB issued a Demand for Tax Return (Demand) stating that appellant may have sufficient income to have a California filing requirement for the 2007 tax year, based on the mortgage interest paid by appellant. The Demand required appellant to file a

- 2007 tax return, send a copy of the tax return if one already had been filed, or explain why he was not required to file a 2007 tax return. Appellant did not respond to the Demand.
3. FTB issued a Notice of Proposed Assessment (NPA) for the 2007 tax year. FTB estimated appellant's taxable income by multiplying the amount of mortgage interest paid by a ratio of four because that is the income-to-mortgage payment ratio formula used by the lending industry. Also, since mortgage interest paid can be claimed as a deduction, FTB applied the mortgage interest paid as an itemized deduction to arrive at appellant's estimated taxable income. The NPA proposed a tax of \$5,375.00, a late filing penalty of \$1,343.75, a notice and demand penalty of \$1,343.75, a filing enforcement cost recovery fee of \$100.00, and applicable interest.
  4. Appellant did not protest the NPA; therefore, the NPA became final.
  5. When the balance remained unpaid, FTB initiated collection action and received payments between March 15, 2012, through April 27, 2022, which satisfied appellant's balance.
  6. On July 15, 2022, appellant untimely filed a 2007 California resident income tax return, reporting no tax due.
  7. FTB processed appellant's untimely tax return and determined that appellant made overpayments totaling \$13,033.54. However, \$5,291.34 of the overpayment was offset by FTB towards appellant's liability with the Department of Child Support Services, and the remaining \$7,722.20 of the overpayment<sup>1</sup> was denied for a refund due to 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 taxpayer has

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<sup>1</sup> FTB also applied \$20.00 of the overpayment to a collection lien fee.

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

Here, appellant’s claim for refund in his 2007 California tax return was untimely filed on July 15, 2022. The first four-year statute of limitations is inapplicable because appellant’s return was untimely filed. Appellant also does not meet the second four-year statute of limitations because it expired on April 15, 2012, or four years from the due date of filing the 2007 tax return on April 15, 2008, and appellant did not file his return until after this date. Lastly, the one-year statute of limitations bars a refund claim for any payments made within the one-year period. Here, FTB concedes that all payments made on or after July 15, 2021, which totaled \$5,291.34 (\$5,260.56 overpayment + \$30.78 interest), are not barred by the statute of limitations. However, the refund of \$5,291.34 was redirected to offset appellant’s liabilities with the California Department of Child Support Services as required under Government Code section 12419.3. All other payments made before July 15, 2021, totaling \$7,722.20, are barred by the statute of limitations. Therefore, FTB correctly denied appellant’s claim for a refund.

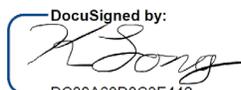
#### HOLDING

The statute of limitations bars appellant’s claim for refund or credit for the 2007 tax year.

#### DISPOSITION

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

We concur:

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 Keith T. Long  
 Administrative Law Judge

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 Veronica I. Long  
 Administrative Law Judge

Date Issued: 7/20/2023