

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

In the Matter of the Appeal of: )  
D. RIVERA AND ) OTA Case No. 221111856  
M. SANCHEZ )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: D. Rivera  
M. Sanchez  
For Respondent: Jessica Galiste, Graduate Student Assistant

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Rivera (appellant-husband) and M. Sanchez (appellant-wife) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$11,631.41 for the 2016 tax year.

Appellants 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 appellants’ claim for a refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. Through FTB’s Integrated Non-Filer Compliance (INC) program, FTB obtained Form W-2 information, which indicated that appellant-husband earned \$90,837 in wage income as reported by Keenan, Hopkins, Sudder & Stowell Contractors, Inc., during the 2016 tax year. However, FTB’s records indicated that appellant-husband had not filed a California Resident Income Tax Return (California tax return) for the 2016 tax year.

Therefore, FTB issued appellant-husband a Request for Tax Return (Request) for the 2016 tax year.

2. The Request required appellant-husband to file a 2016 tax return, provide evidence that a 2016 tax return was already filed, or provide information that he did not have a 2016 filing requirement. However, appellant-husband did not respond to the Request.
3. FTB issued a Notice of Proposed Assessment (NPA) for the 2016 tax year. FTB estimated appellant-husband's taxable income based on the Form W-2 information. The NPA proposed a tax liability of \$3,628, a late filing penalty of \$907, and applicable interest.
4. Appellant-husband did not protest the NPA; therefore, the NPA became final.
5. FTB received payments from appellant-husband between May 6, 2019, through October 31, 2019, which satisfied appellant-husband's balance.
6. On May 9, 2022, appellant-husband and appellant-wife untimely filed a joint 2016 California tax return, claiming a refund of \$4,880.
7. FTB processed appellants' untimely 2016 California tax return and denied appellants' claim for refund due to the statute of limitations.
8. This timely appeal followed.
9. On appeal, appellants provided an invoice dated July 9, 2017, with a notation for "tax return preparation fee."

#### 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 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, appellants' claim for a refund on their 2016 California tax return was untimely filed on May 9, 2022. The first four-year statute of limitations period is inapplicable because appellants' return was filed after the extension of time to file. Appellants also do not meet the second four-year statute of limitations period because they did not file their return until after the

deadline to file a claim for refund, which originally expired on April 15, 2021, and was postponed to May 17, 2021, due to the COVID-19 pandemic.<sup>1</sup> Lastly, the one-year statute of limitations period described in R&TC section 19306(a) is one year from the date of overpayment. Here, appellant-husband's most recent payment for the 2016 tax year was made on October 31, 2019. Therefore, the one-year statute of limitations for the most recent payment expired on October 31, 2020, or one year from the date appellant-husband's payment were received. Since appellants' claim for refund was filed on May 9, 2022, which is after October 31, 2020, and no payments for the 2016 tax year were made between May 9, 2021, and May 9, 2022, the one-year statute of limitations also bars appellants' claim for a refund.

Here, appellants argue they originally filed their California tax return at some time in 2017, based on the July 9, 2017 invoice from their tax preparer, which notated "tax return preparation fee." However, the invoice itself is not evidence that appellants timely filed their 2016 California tax return. The invoice does not show that an original 2016 California tax return was timely filed on any specific date during 2017. Furthermore, evidence that a return was prepared prior to the due date does not, in itself, prove a filing of the return. (*Appeal of La Salle Hotel Co.*, (66-SBE-071) 1966 WL 1412.) In fact, if the taxpayer places a return in a United States mailbox before the statutory filing deadline and there is no record of that return being received, the taxpayer must offer compelling proof, such as a registered or certified mail receipt, that the return was timely filed. (Gov. Code, § 11003; Cal. Code Regs., tit. 18, § 30219(a); *Appeal of Fisher*, 2022-OTA-337P.) Here, appellants have not offered such proof. In this case, an invoice for tax return preparation fails as evidence to meet appellants' burden of proof of timely filing the original 2016 California tax return. Therefore, appellants' claim for refund is barred by the statute of limitations.

---

<sup>1</sup> <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> .

HOLDING

The statute of limitations bars appellants’ claim for a refund for the 2016 tax year.

DISPOSITION

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

DocuSigned by:  
*Eddy Y.H. Lam*  
1EAB8BDA3324477...

\_\_\_\_\_  
Eddy Y.H. Lam  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Lambert*  
CB1E7DA37831416

\_\_\_\_\_  
Josh Lambert  
Administrative Law Judge

DocuSigned by:  
*Josh Aldrich*  
48745BB806914B4...

\_\_\_\_\_  
Josh Aldrich  
Administrative Law Judge

Date Issued: 8/7/2023