

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

In the Matter of the Appeal of:	)	OTA Case No. 21129218
<b>R. GARWOOD AND</b>	)	
<b>L. GARWOOD</b>	)	
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**OPINION**

Representing the Parties:

For Appellants:	R. Garwood and L. Garwood
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For Respondent:	Eric R. Brown, Tax Counsel III
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For Office of Tax Appeals:	James Filling, Graduate Student Assistant
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A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Garwood and L. Garwood (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of \$13,768 for the 2016 tax year; \$10,459 for the 2017 tax year; \$26,217 for the 2018 tax year; \$19,134 for the 2019 tax year; and \$63,157 for the 2020 tax year.<sup>1</sup>

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

**ISSUES**

1. Whether appellants timely filed a claim for refund for the 2016 tax year.
2. Whether appellants have shown error in FTB's denials of appellants' claims for refund for the 2017 through 2020 tax years.
3. Whether a frivolous appeal penalty should be imposed.

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<sup>1</sup> Appellants list in their appeal letters the following amounts as at issue before the Office of Tax Appeals: \$15,287 for the 2016 tax year; \$48,521 for the 2017 tax year; \$25,562 for the 2018 tax year; \$119,135 for the 2019 tax year; and \$71,657 for the 2020 tax year. However, the Office of Tax Appeals' jurisdiction to hear and decide a refund denial is limited to any portions actually denied by FTB or deemed denied by FTB. (Cal. Code Regs., tit. 18, § 30103(a)(2), (3).)

### FACTUAL FINDINGS

1. On March 26, 2017, appellants timely filed a joint tax return for the 2016 tax year. Appellants satisfied their tax liability through estimated payments and wage withholdings.
2. For tax years 2017 through 2020, appellants timely filed joint tax returns reporting income and paid taxes on that income.
3. Subsequently, on September 13, 2021, appellants filed amended returns for tax years 2016 through 2020, each accompanied with a Form 4852 (Substitute W-2). In appellants' amended returns and Forms 4852, they claimed zero wages, zero income, and zero tax liability. FTB treated appellants' amended returns as claims for refund.
4. FTB denied appellants' claims for refund for the 2016 through 2020 tax years. FTB also sent a Notice of Frivolous Amended Return Determination for each year, warning appellants that a penalty of \$5,000 would be imposed if appellants did not withdraw their amended returns. Appellants notified FTB that they would not withdraw their amended returns.
5. Appellants timely appealed FTB's denials of appellants' claims for refunds for the 2016, 2017, 2018, 2019, and 2020 tax years. In a letter dated December 30, 2021, the Office of Tax Appeals (OTA) acknowledged receipt of appellants' appeal of the 2016 through 2020 tax years. In the letter, OTA informed appellants that they may be raising arguments that OTA and the Board of Equalization (BOE) have found to be frivolous. OTA warned that if appellants' appeal has been instituted or maintained primarily for delay, or if appellants' position is frivolous or groundless, OTA may impose a penalty up to \$5,000 under R&TC section 19714.

### DISCUSSION

#### Issue 1: Whether appellants timely filed a claim for refund for the 2016 tax year.

R&TC section 19306(a) provides that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if filed within the extended filing period; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. 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 filing deadline for that tax year. (R&TC § 19002(c)(1).) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayers' failure to file a claim for refund within the statute of limitations, for whatever reason, bars them from receiving a refund at a later date. (*Appeal of Khan*, 2020-OTA-126P.)

Here, appellants filed a claim for refund for the 2016 tax year on September 13, 2021. Because appellants timely filed their 2016 tax return on March 26, 2017, they had until April 15, 2021, to file a timely claim for refund for the 2016 tax year.<sup>2</sup> Under the alternative one-year statute of limitations, appellants were required to file their claim for refund no later than April 15, 2018, which is one year from the date appellants' withholdings for the 2016 tax year were deemed paid. Accordingly, because appellants did not timely file their claim for refund for the 2016 tax year within the statute of limitations, FTB properly denied appellants' refund claim.

Issue 2: Whether appellants have shown error in FTB's denials of appellants' claims for refund for the 2017 through 2020 tax years.

If there has been an overpayment of any liability imposed under the Personal Income Tax Law by taxpayers for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayers and the balance must be refunded to the taxpayers. (R&TC, § 19301(a).) The taxpayers have the burden of proof to show that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellants argue they are entitled to tax refunds because they are not federal or state employees and as such, any money appellants received from whatever source was not appropriately taxed as income under federal or California tax law and the total amount of tax paid should be refunded. Appellants do not appear to dispute that they received income, only that they are not subject to federal or state income tax because the income did not come from state or federal employment.

OTA and OTA's predecessor, BOE, have consistently rejected appellants' arguments as frivolous and without merit. (See, e.g., *Appeal of Balch*, 2018-OTA-159P.) As such, OTA

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<sup>2</sup> Following the IRS, FTB 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>.) Appellants' 2016 return was also filed outside of the May 17, 2021 deadline.

declines to discuss appellants' contentions further because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417, 1417.) Accordingly, appellants have not shown error in FTB's denial of appellants' claims for refund.

Issue 3: Whether a frivolous appeal penalty should be imposed.

R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears to OTA that proceedings before it have been instituted or maintained primarily for delay, or that the taxpayers' position is frivolous or groundless. California Code of Regulations, title 18, (Regulation) section 30217(a) provides that OTA may impose a frivolous appeal penalty pursuant to R&TC section 19714 "[i]f a Panel determines that a franchise or income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay[.]"

Regulation section 30217(b) lists the following nonexclusive factors to be considered in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether appellants are making arguments that OTA, in a precedential opinion, or BOE, in a formal opinion, or courts have rejected; (2) whether appellants are making the same arguments that the same appellants made in prior appeals; (3) whether appellants filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether appellants have a history of filing frivolous appeals or failing to comply with California's tax laws; and (5) whether appellants have been notified, in a current or prior appeal, that a frivolous appeal penalty may apply. Furthermore, in considering what amount of penalty to impose, OTA has in the past considered fairness to taxpayers as well as fairness to the public, which is protected from the cost of adjudicating frivolous appeals through a penalty's deterrent effect. (See *Appeal of Balch, supra*, fn. 7.)

Here, appellants' arguments that their wages are not taxable income are the same arguments that OTA, BOE, and courts have consistently rejected and labeled as frivolous. (See *Appeal of Balch, supra*.) Appellants have received notices from both FTB and OTA regarding the frivolous nature of their argument: FTB informed appellants in its opening brief that OTA may impose a frivolous appeal penalty, and OTA notified appellants that they may be subject to a frivolous appeal penalty. Despite these warnings, appellants continue to pursue this appeal with the same frivolous arguments. Therefore, OTA imposes a frivolous appeal penalty of

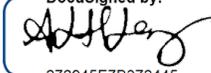
\$1,000. Appellants are on notice that any future appeal with the same or additional frivolous arguments may merit a higher penalty amount.

HOLDINGS

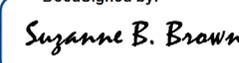
1. Appellants did not timely file a claim for refund for the 2016 tax year.
2. Appellants have not shown error in FTB’s denial of appellants’ claims for refund for the 2017 through 2020 tax years.
3. A frivolous appeal penalty in the amount of \$1,000 is imposed.

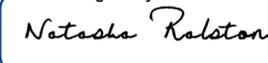
DISPOSITION

FTB’s actions are sustained, and a frivolous appeal penalty of \$1,000 is imposed.

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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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 Natasha Ralston  
 Administrative Law Judge

Date Issued: 5/16/2023