

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

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

) OTA Case No. 221011615  
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**OPINION**

Representing the Parties:

For Appellant: J. Stewart

For Respondent: Joel M. Smith, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, J. Stewart (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,367.07 for the 2016 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single Administrative Law Judge. (Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Amanda Vassigh held an oral hearing for this matter electronically, on June 15, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether the statute of limitations bars appellant’s claim for refund for the 2016 year.

**FACTUAL FINDINGS**

1. FTB received information that appellant received income during the 2016 tax year that resulted in a California tax return filing requirement.
2. Appellant had no tax return on file for that year. As such, FTB issued a Request for Tax Return (Request) to appellant dated May 1, 2018, requesting that appellant file a tax return for the 2016 tax year or provide evidence showing that appellant had no filing requirement for the 2016 tax year, by June 6, 2018.

3. When appellant did not respond to the Request, FTB sent appellant a Notice of Proposed Assessment (NPA) dated July 2, 2018, proposing tax based on an estimate of appellant's income and imposing a late-filing penalty and a demand penalty, plus interest.
4. The NPA became final after appellant failed to timely protest the proposed assessment.
5. FTB sent appellant a Notice of State Income Tax Due dated October 1, 2018, and engaged in collection action. Through FTB's collection action and/or appellant's installment payments,<sup>1</sup> FTB received payments between November 28, 2018, and November 4, 2019.
6. On April 15, 2022, appellant filed a joint 2016 California tax return,<sup>2</sup> reporting tax due of \$79.00. Appellant remitted payment of \$79.00 when he filed the California tax return. FTB issued appellant a refund of \$79.83 on September 14, 2022.
7. Appellant's 2016 California tax return did not reflect the payments discussed above.
8. FTB treated appellant's 2016 California tax return as a claim for refund and denied appellant's claim for refund on the basis that the statute of limitations had expired.
9. Appellant then filed this timely appeal.

#### DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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 the return was timely filed within the extended filing period pursuant to R&TC section 18567 or 18604 (whichever is applicable); (2) four years from the due date prescribed 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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

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<sup>1</sup> FTB's opening brief refers to both FTB's collection action and an installment agreement as the source(s) of payments made for appellant's 2016 tax year.

<sup>2</sup> Appellant and his spouse filed their 2016 California tax return using married filing jointly status, but appellant is the sole appellant in this matter and therefore OTA refers to the 2016 California tax return as appellant's claim for refund.

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602; *Appeal of Benemi Partners, L.P., supra.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84, 100-101 and *U.S. v. Boyle* (1985) 469 U.S. 241, 249.)

Since appellant did not file a timely return, the applicable claim for refund statute of limitations in this appeal is the later of four years from the last day prescribed for filing the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2016 tax year, the four-year statute of limitations period expired on May 17, 2021 (four years from the due date of April 15, 2017, plus time provided under the COVID-19 State of Emergency postponement).<sup>3</sup> Appellant did not file a claim for refund until April 15, 2022. Appellant's claim for refund for the 2016 tax year is therefore barred under the four-year statute of limitations period.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Appellant made a payment of \$79 on April 15, 2022, which FTB refunded to appellant with interest. Other than this payment, the record shows that appellant's last payment for the 2016 tax year was made in 2019. Since appellant filed his claim for refund on April 15, 2022, his claim for refund is barred under the one-year statute of limitations.

In this appeal, appellant does not argue that he filed his claim for refund within the prescribed time periods set forth in R&TC section 19306. Rather, appellant's arguments are largely equitable in nature. Appellant argues that his failure to timely file a claim for refund was

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<sup>3</sup> R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone certain tax-related deadlines. 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 <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>.)

a mistake.<sup>4</sup> Appellant points out that mistakes happen and asks for “some leniency.” Appellant’s witness testified that appellant and his wife were dealing with probate issues and litigation regarding a property that they had purchased. OTA finds the testimony of appellant and his witness earnest and credible. However, OTA can only grant relief where the law specifically allows. (*Appeal of Estate of Gillespie, supra; Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The law is clear that the language of the statute of limitations must be strictly construed, and the law does not provide a reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) As explained above, this is true even when it is later shown that the tax was not owed in the first place. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*)

Without a timely refund claim, appellant’s claim for refund is barred by the statute of limitations.

#### HOLDING

The statute of limitations bars appellant’s claims for refund for the 2016 tax year.

#### DISPOSITION

FTB’s action denying appellant’s claims for refund for the 2016 tax year is sustained.

DocuSigned by:  
*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

Date Issued: 9/13/2023

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<sup>4</sup> Appellant also argues that the late-filing and demand penalties are “onerous.” These penalties are set by statute, and OTA does not have jurisdiction to determine whether a California statute is invalid. (Cal. Code Regs., tit.18, § 30104(a).)