

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

In the Matter of the Appeal of: ) OTA Case No. 230112291  
**J. SOBA** )  
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**OPINION**

Representing the Parties:

For Appellant: Kerri L. Lohr, CPA

For Respondent: Natasha S. Page, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Soba (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$12,154.76 for the 2015 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 2015 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Through its Integrated Non-Filer Compliance program, FTB obtained information indicating that appellant paid mortgage interest on California property but had not filed a 2015 tax return. Accordingly, FTB issued a Demand for Tax Return for the 2015 tax year. Appellant did not respond.
2. FTB issued appellant a Notice of Proposed Assessment (NPA) proposing an assessment of tax of \$6,569.00, a late-filing penalty of \$1,642.25, a demand penalty of \$1,642.25, a filing enforcement fee of \$93.00, and applicable interest. Appellant did not respond.
3. When the NPA became final, FTB initiated collection action.

4. On September 16, 2020, FTB received payment of \$12,154.76 on appellant's account.
5. On September 23, 2022, appellant filed a 2015 tax return reporting tax of \$0. FTB treated the return as a claim for refund of appellant's payment.
6. FTB denied appellant's claim for refund of \$12,154.76 due to the expiration of the statute of limitations.
7. This timely appeal followed.

### DISCUSSION

No credit or refund may 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 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).) In a claim for refund, taxpayers have the burden of proof to show that a refund is warranted and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, *supra.*) If the taxpayers fail to file a claim for refund within the statute of limitations, the taxpayers are barred from later filing a claim for refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Here, appellant failed to file a 2015 return by the extended due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year statute of limitations period is inapplicable. The second four-year statute of limitations period runs from the original due date of appellant's 2015 return. (R&TC, § 19306(a).) For the 2015 tax year, the second four-year statute of limitations expired on July 15, 2020, which is four years from the due date of the return as extended by FTB.<sup>1</sup> (R&TC, § 18566.) Appellant, however, filed his return for the 2015 tax year on September 23, 2022, which is beyond the second four-year statute of limitations period prescribed in R&TC section 19306.

With regard to the one-year statute of limitations, appellant's payment for 2015 was made on September 16, 2020. A claim for refund would be timely if filed within one year from the date the payment was made. Thus, to be within the one-year statute of limitations, appellants'

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<sup>1</sup> FTB issued FTB Notice 2020-02, which extended the statute of limitations for a 2015 claim for refund from April 15, 2020, until July 15, 2020.

claim for refund needed to be filed on or before September 16, 2021. But appellant’s claim for refund, filed on or about September 22, 2022, is well beyond the one-year statute of limitations prescribed in R&TC section 19306(a).


Appellant asserts that his claim for refund should be granted because he mailed his 2015 California tax return in late 2019 or early 2020. Appellant states that he filed his federal and California 2015 tax returns at the same time, and his federal return was received by the IRS. As support, appellant provides a worksheet indicating that his 2015 California tax return was provided to him by a return preparer in September 2019. However, appellant has not provided evidence to support that his 2015 California tax return was timely filed. (See *Appeal of Fisher*, 2022-OTA-337P.) Moreover, appellant’s federal account transcript indicates that as of February 22, 2023, no federal return had been filed by appellant. Accordingly, appellant has not met his burden of proof to show that a refund is warranted and that the claim is timely. (*Appeal of Estate of Gillespie, supra; Appeal of Benemi Partners, L.P., supra.*)

HOLDING

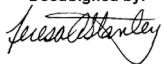
Appellants’ claim for refund for the 2015 tax year is barred by the statute of limitations.


DISPOSITION

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

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Veronica I. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 9/27/2023