

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
F. DE GUZMAN

) OTA Case No. 22029775
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OPINION

Representing the Parties:

For Appellant: F. de Guzman

For Respondent: Eric R. Brown, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. de Guzman (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$8,129.84 for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals decides this matter based on the written record.

ISSUE

Whether appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely 2016 California income tax return.
2. Respondent received information from the California Department of Real Estate that appellant held an active professional license in 2016. Based on that information, respondent estimated appellant’s income using data of taxpayers who hold such a license and issued a Demand for Tax Return on April 10, 2018. Respondent received no response from appellant.

3. Respondent estimated appellant's income, calculated appellant's tax based on that estimate, and issued a Notice of Proposed Assessment dated August 20, 2018. Respondent received no response.
4. Respondent's proposed assessment went final, and respondent initiated collection action.
5. Respondent received a payment of \$8,446.84¹ on July 15, 2019.
6. On August 30, 2021, appellant filed a 2016 California income tax return, which respondent treated as a claim for refund of \$8,447.00.
7. Respondent denied appellant's claim for refund on November 23, 2021. This timely appeal followed.

DISCUSSION

As relevant here, a claim for credit or refund must be filed within four years from the date the return was filed, if filed within an extension allowed by R&TC section 18567 or 18604; within four years from the last day prescribed for filing the return without regard to any such extension; or within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) For the 2016 tax year, the deadline for appellant to file a timely claim for refund would have been April 15, 2021; however, because of the COVID-19 pandemic, respondent extended the deadline to May 17, 2021.² It is undisputed appellant filed her claim for refund after the statute of limitations expired, and thus, appellant is not entitled to a refund for the 2016 tax year. Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such a harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

Appellant argues that she did not earn the amount of income respondent estimated, and thus, is entitled to a refund of the overpayments for the 2016 tax year, regardless of the timeliness of her claim for refund filing. However, the tax payments at issue here are overpayments, and thus, subject to the statute of limitations. Appellant also argues that her community was the victim of mail theft from 2013 through 2019, and that she was the victim of fraud and identity theft. However, the law does not provide for the waiver of the statutory period

¹ This amount includes a \$317 collection cost fee, which appellant is not appealing.

² 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>.


based on these arguments. A taxpayer’s failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Khan, supra.*) This is true even when it is later shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Thus, appellant has not shown she is entitled to a refund of an overpayment made for the 2016 tax year.

HOLDING


Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.


DISPOSITION

Respondent’s action is sustained.

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

DocuSigned by:

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 10/6/2023