

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

In the Matter of the Appeal of: ) OTA Case No. 220911323  
**M. KOROCHKIN-ZORIN** )  
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**OPINION**

Representing the Parties:

For Appellant: Boris K’Zorin, Representative

For Respondent: Joel M. Smith, Tax Counsel III

L. KATAGIHARA: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Korochkin-Zorin (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$622.70 for the 2016 tax year.

Appellant 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 appellant’s remaining claim for refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file a California income tax return for the 2016 tax year.
2. FTB received information indicating that appellant earned sufficient income in 2016 to trigger a filing requirement. Consequently, FTB issued a Request for Tax Return (Request) to appellant, but appellant did not timely file his tax return or respond to the Request.
3. Following appellant’s nonresponse to the Request, FTB issued a Notice of Proposed Assessment (NPA) to appellant based on the information available to FTB. Appellant did not timely respond to the NPA, so the proposed liability became final.

4. Thereafter, FTB initiated involuntary collection action. FTB collected a \$377.56 payment on July 11, 2019, a \$170.51 payment on August 20, 2019, a \$386.38 payment on October 30, 2019, and a \$5.25 payment on December 10, 2019, totaling \$939.70. FTB also collected five separate payments of \$151.00 between September 21, 2021, and January 21, 2022, totaling \$755.00.
5. On May 8, 2021, \$191.36 was transferred from appellant's overpayment for the 2020 tax year and applied to appellant's liability for the 2016 tax year.
6. On April 22, 2022, appellant filed his 2016 tax return, reporting no tax, which FTB accepted and treated as a claim for refund.
7. FTB determined that appellant had a total overpayment of \$1,572.70 for the 2016 tax year.<sup>1</sup> Of this amount, FTB determined that appellant was entitled to a refund of the payments made or received between April 22, 2021, and April 22, 2022, totaling \$946.36, plus interest of \$3.64. FTB did not issue the \$950.00 (\$946.36 + \$3.64) refund for the 2016 tax year to appellant directly but instead applied the refund to appellant's liability for the 2018 tax year.
8. FTB denied appellant's remaining claim for refund in the amount of \$622.70.
9. This timely appeal followed.

#### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that 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 date the return was due, 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.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure to file a claim for refund within the

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<sup>1</sup> This amount consists of appellant's total payments of \$1,886.06 (\$939.70 + \$755.00 + \$191.36), plus interest allowed by FTB in the amount of \$3.64, less a collection cost recovery fee of \$317.00.

statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Ibid.*)

Here, because appellant did not file his 2016 tax return pursuant to a valid extension of time to file, the first four-year statute of limitations under R&TC section 19306(a) does not apply. Consequently, appellant's claim for refund can only be considered timely if it was filed within four years of the date the return was originally due, or within one year from the date of overpayment.

Appellant's 2016 tax return was originally due April 15, 2017. To be timely under the second four-year statute of limitations, appellant was required to file his claim for refund for the 2016 tax year by May 17, 2021.<sup>2</sup> However, appellant filed his 2016 tax return, which FTB treated as a claim for refund, on April 22, 2022. Therefore, appellant's claim for refund is time barred under the second four-year statute of limitations.

Alternatively, a claim for refund may be allowed if it is filed within one year from the date of overpayment. (R&TC, § 19306(a).) Having filed his claim for refund (via his 2016 tax return) on April 22, 2022, appellant is entitled to a refund or credit only for the payments and transfer made between April 22, 2021, and April 22, 2022, all of which FTB credited to appellant's liability for the 2018 tax year.<sup>3</sup> The remaining payments were collected by FTB prior to April 22, 2021, and thus, are time barred under the one-year statute of limitations.

On appeal, appellant argues that he filed the claim for refund (via his 2016 tax return) on July 22, 2021. However, appellant's 2016 tax return was dated April 21, 2022, which FTB treated as filed on the next day (i.e., April 22, 2022), and thus contradicts appellant's contention. Moreover, even if appellant filed his 2016 tax return on July 22, 2021, the outcome of this appeal would remain the same – the claim for refund would still be time barred under both four-year statutes of limitations, and as there were no payments collected one year prior to July 22, 2021, no additional amounts would be eligible for refund or credit.

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<sup>2</sup> FTB postponed the deadline for individual taxpayers to file refund claims for the 2016 tax year to May 17, 2021. (See *State Postpones Deadline For Claiming 2016 Tax Refunds to May 17, 2021*, April 26, 2021, available at: <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>.)

<sup>3</sup> Pursuant to R&TC section 19301, FTB may credit overpayments of certain liabilities against any amount due from the taxpayer. (See also *Appeal of Cornbleth*, 2019-OTA-408P.)

R&TC section 19316 provides a narrow exception that suspends the statute of limitations for claims for refunds where an individual taxpayer is deemed “financially disabled.” Under this provision, the time for filing a claim for refund may be suspended during the period in which an individual taxpayer is financially disabled (as defined in R&TC section 19316(b)) if the taxpayer can establish such financial disability in accordance with the procedures and requirements specified by FTB. (R&TC, § 19316(a).) As relevant here, pursuant to R&TC section 19316(b), a taxpayer is considered financially disabled if the individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. FTB imposes the additional requirement that a taxpayer submit an affidavit from a physician that identifies the period during which the taxpayer’s impairment rendered the taxpayer incapable of managing his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*)

Appellant asserts that he was impacted by a prolonged hardship aggravated by the pandemic and geopolitical issues. To the extent that appellant contends that his hardship qualifies as a financial disability, appellant has not provided any documentation evidencing that he was incapable of managing his financial affairs. Nor has appellant contended or substantiated that such inability was by reason of a medically determinable physical or mental impairment that was either deemed to be a terminal impairment or expected to last for a continuous period of not less than 12 months. As appellant has not established that he was financially disabled, the statute of limitations cannot be suspended on that basis.

Appellant’s representative also asserts that he, himself, was unaware of the statute of limitations as a result of “being distracted by hardship, [the] pandemic, [a] forced relocation, [and becoming disabled,]” in addition to being impacted by geopolitical issues. However, even if true, the law does not allow the statute of limitations to be suspended because the taxpayer’s representative or tax preparer was financially disabled or otherwise unable to timely file a claim for refund on the taxpayer’s behalf.

As there is no basis to suspend the statute of limitations, appellant was required to file his claim for refund within the statutory periods, even if the tax was alleged to have been erroneously or wrongfully collected. (*Appeal of Benemi Partners, L.P., supra.*) Having failed to do so, appellant is not entitled to the remainder of his overpayments.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Lauren Katagihara*  
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Lauren Katagihara  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Andrew Wong*  
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Andrew Wong  
Administrative Law Judge

Date Issued: 5/15/2023