

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A. OTT**

) OTA Case No. 230112273  
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**OPINION**

Representing the Parties:

For Appellant: A. Ott

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: Steven Kim, Attorney III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Ott (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$872 for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided by the Office of Tax Appeals (OTA) based on the written record.

**ISSUE**

Whether appellant’s claim for refund is untimely.

**FACTUAL FINDINGS**

1. Appellant, a California resident, earned income paid to her during calendar year 2017. The income was reported on IRS Form W-2, Box 16, as state wages.
2. For calendar year 2017, appellant’s employer or payor withheld \$872 from appellant’s wages and remitted it to FTB as California income tax withholdings.
3. It is undisputed that appellant did not timely file a 2017 state income tax return with FTB.

4. On or about November 10, 2022, appellant filed an untimely California Resident Income Tax Return, Form 540 (return) for calendar year 2017.<sup>1</sup> The return claimed an overpayment of \$872, the full amount of her state income tax withholdings. FTB accepted the return as a claim for refund.
5. FTB does not dispute that appellant made an \$872 overpayment. Appellant's tax year balance for 2017 with FTB reflects a credit of \$872.
6. On December 15, 2022, FTB denied the refund claim in its entirety.
7. Appellant timely appealed FTB's action to OTA.

### DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

R&TC section 19306 sets forth the general statute of limitations for filing a refund claim, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment.

Appellant does not dispute that she filed the refund claim after the timeframe set forth in the general statute of limitations for filing a refund claim had already lapsed.<sup>2</sup> (See R&TC, § 19306.) Instead, appellant contends that there is reasonable cause to excuse her untimely filing of the refund claim. Specifically, appellant contends that she is a single mom with a disabled child, and she was unable to obtain the necessary paperwork to timely file her return (which was accepted as a refund claim). While OTA is sympathetic to appellant's circumstances, there is no

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<sup>1</sup> The return is dated November 10, 2022. FTB received and accepted it on November 15, 2022. It was mailed to FTB and there is no postmark date in the file. The difference in filing date is immaterial under the facts. This Opinion uses the November 10, 2022 date as the filing date for purposes of analysis.

<sup>2</sup> The four-year statute of limitations expired on April 15, 2022 (i.e., four years after the original due date of her 2017 return), because appellant did not timely file a return within either the original or extended due date. (R&TC, § 19306(a).) Withholding payments are deemed paid on the original due date of a return. (R&TC, § 19002(c)(1).) Thus, the one-year statute of limitations expired one year later on April 15, 2019. Appellant filed her claim for refund on November 10, 2022, after the four-year and one-year statute of limitations had already expired.

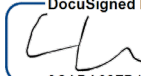
reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of R&TC section 19306 is explicit and must be strictly construed, subject to limited exceptions which are not relevant here.<sup>3</sup> (*Ibid.*) A taxpayer’s untimely filing of a claim for refund for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) As such, there is no basis for OTA to grant a refund to appellant for her \$872 overpayment.

### HOLDING

Appellant’s claim for refund is untimely.

### DISPOSITION

FTB’s action in denying the claim for refund is sustained.

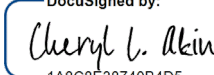
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Andrew J. Kwee  
Administrative Law Judge

We concur:

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 10/5/2023

<sup>3</sup> Under R&TC section 19316(a), the statute of limitations for filing a claim for refund shall be suspended for any period during which the taxpayer is “financially disabled.” A taxpayer is “financially disabled” if: (1) the 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; and (2) there is no spouse or other legally authorized person to act on the taxpayer’s behalf in financial matters. (R&TC, § 19316(b).) The exception does not extend to caretakers of financially disabled dependents. Appellant does not contend that she herself was financial disabled, and the facts do not suggest that the exception would apply.