

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

In the Matter of the Appeal of:  
**M. BOSKER-BROWN**

) OTA Case No. 230112349  
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**OPINION**

Representing the Parties:

For Appellant:

M. Bosker<sup>1</sup>

For Respondent:

Paige Chang, Attorney  
Maria Brosterhous, Attorney

K. Long, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Bosker-Brown (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,001.34 for the 2017 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, § 30209.5.) Office of Tax Appeals (OTA) Administrative Law Judge Keith T. Long held an oral hearing for this matter electronically, on August 17, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely California income tax return for the 2017 tax year.

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<sup>1</sup> Appellant no longer uses the hyphenated last name “Bosker-Brown.” Instead, appellant represents herself as “M. Bosker.”

2. On April 24, 2019, FTB issued a Request for Tax Return after receiving information that appellant earned sufficient income in 2017 to create a filing requirement.
3. Appellant did not timely respond to FTB's request and FTB issued a Notice of Proposed Assessment (NPA) on December 2, 2019, proposing a tax of \$4,776.00. After applying withholding credits of \$3,559.00, the NPA reflected a tax balance due of \$1,217.00, a late-filing penalty of \$304.25, and applicable interest. Appellant did not timely respond and the NPA became final.
4. FTB initiated collections actions. During the period March 2, 2020, through January 21, 2021, FTB sent several notices requesting payment of the amount due. On April 20, 2021, FTB credited an overpayment of \$2,070.34 that appellant made during the 2020 tax year to appellant's liability for 2017, which satisfied the liability.
5. On September 15, 2022, appellant filed an untimely joint California Nonresident or Part-Year Resident income tax return, which FTB treated as a claim for refund.
6. By letter dated October 11, 2022, FTB denied appellant's claim for refund in the amount of \$3,001.34 based on the expiration of the statute of limitations.
7. This timely appeal followed.

#### DISCUSSION

R&TC section 19306(a) provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within four years from the date of the original tax return, or four years from the date the return was filed if it was filed by the automatic extended due date, or one year from the date of the overpayment, whichever is later. The taxpayer has the burden of proving a timely claim and their entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant did not file a 2017 return by the due date of April 15, 2018, or within the automatic extension period which ended on October 15, 2018. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later, on April 15, 2022. (R&TC, § 19306(a).) Appellant filed the claim for refund on September 15, 2022. Appellant contends that she filed within four years of the end of the extension period and therefore was timely. However, because her 2017 return was not filed within the automatic extension period, the statute of limitations period applicable to a timely

filing by the extended due date does not apply. Thus, under R&TC section 19306, the four-year statute of limitation expired prior to appellant filing the claim for refund.

The alternative one-year statute of limitations applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Here, appellant's withholding credits of \$3,559 are deemed paid as of the original due date of the return, April 15, 2018. (R&TC, § 19002.) Additionally, appellant made a payment on April 20, 2021. In each case, appellant's payments were made more than one year prior to September 15, 2022 (the date that appellant filed a claim for refund.) Thus, the claim for refund is barred under the one-year statute of limitations period.

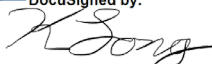
Appellant contends that she failed to file a timely return due to a miscommunication with her former spouse. Appellant also asserts that, at some point in 2018, her former spouse misplaced the relevant tax documents, which were not found for several years. While OTA recognizes that appellant faced a series of difficult circumstances, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Further, a taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) 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.) Such fixed deadlines may appear harsh because they can be missed, but the occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) Consequently, appellant's claim for refund is barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s denial of appellant’s claim for refund for the 2017 tax year is sustained.

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Keith T. Long  
Administrative Law Judge

Date Issued: 10/9/2023