

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**D. BROWN** ) OTA Case No. 221212159  
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**OPINION**

Representing the Parties:

For Appellant: D. Brown  
For Respondent: AnaMarija Antic-Jezildzic, Specialist  
For Office of Tax Appeals: Neha Garner, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Brown (appellant) appeals an action by respondent Franchise Tax Board (FTB) partially denying appellant’s claim for refund of \$839.89 for the 2017 tax year.<sup>1</sup>

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

**ISSUE**

Whether the statute of limitations bars appellant’s claim for an additional refund.

**FACTUAL FINDINGS**

1. FTB issued appellant a Demand for Tax Return (Demand), informing her that she may have received sufficient income from Transamerica Life Insurance Company to have a filing requirement for the 2017 tax year, but there was no record that she filed a California tax return. The Demand also notified appellant that if she did not timely respond, FTB would assess tax, a notice and demand penalty, a late-filing penalty, a filing enforcement fee, and applicable interest. Appellant did not respond.

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<sup>1</sup> Appellant indicated that the amount in dispute is \$839, but as discussed below, the Office of Tax Appeals finds the correct amount is \$839.89.

2. FTB then issued a Notice of Proposed Assessment (NPA) for the 2017 tax year. The NPA estimated tax and after applying exemption credits and a California income tax withholding credit of \$154, FTB computed a proposed tax liability of \$444, a late-filing penalty of \$135, a notice and demand penalty of \$149.50, a filing enforcement cost recovery fee of \$93, and applicable interest. Appellant did not contest the NPA, and it became final.
3. As relevant to this appeal, on September 7, 2021, appellant untimely filed her 2016 California tax return and requested that the 2016 tax overpayment of \$1,001.89 be applied to the 2017 estimated tax liability. FTB processed appellant's request and applied the 2016 tax overpayment to the 2017 estimated tax liability effective September 30, 2021.
4. On July 1, 2022, through collection activities, FTB received a 2017 tax year involuntary payment from appellant of \$247.08.
5. On October 15, 2022, FTB received appellant's untimely filed 2017 California tax return, which reported, after applying exemption credits, no tax was owed. On her 2017 California tax return, appellant claimed an overpayment of tax of \$6,532, which consists of California income tax withheld of \$154 and other payments of \$6,378.<sup>2</sup>
6. FTB treated appellant's 2017 California tax return as a claim for refund. Furthermore, FTB issued a notice that revised appellant's overpayment to \$1,086.97, which consists of California income tax withheld of \$154, an involuntary payment of \$247.08, and an overpayment credit from the 2016 tax year of \$1,001.89, less the filing enforcement cost recovery fee of \$316. However, FTB granted a partial refund of \$247.08 (the July 1, 2022 involuntary payment) and denied the remaining refund portion of \$839.89 on the ground that it was barred by the statute of limitations.
7. This timely appeal followed.

### DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if

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<sup>2</sup> Appellant's 2017 California tax return notated that FTB collected \$6,378 through bank seizure. However, FTB has no record, and appellant has not provided any documentary evidence to substantiate, that FTB seized a total of \$6,378 from appellant's bank account for the 2017 tax year.

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).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Appellant's refund claim is barred by the statute of limitations because appellant did not file the claim within the statute of limitations as set forth in R&TC section 19306(a).

Appellant's 2017 California tax return was untimely filed on October 15, 2022. As such, the first four-year statute of limitations period is inapplicable because the 2017 California tax return was untimely filed and therefore not filed pursuant to a valid extension of time to file. Appellant also does not meet the second four-year statute of limitations because it expired on April 15, 2022, four years from the original due date of the 2017 California tax return on April 15, 2018.

Lastly, the third one-year statute of limitations period described in R&TC section 19306(a) is one year from the date of overpayment. Here, the involuntary payment of \$247.08 was received on July 1, 2022, and the statute of limitations would have expired on July 1, 2023, or one year from the date FTB received the payment. Since appellant's claim for refund was filed on October 15, 2022, FTB properly determined that appellant's claim was timely with respect to the July 1, 2022 involuntary payment of \$247.08 and therefore it refunded this amount to appellant.

However, the 2017 California income tax withholding credit of \$154 is deemed to have been paid on the original due date of the tax return, or April 15, 2018, pursuant to R&TC section 19002(c)(1), and one year from that date was April 15, 2019. (See *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Also, the overpayment credit that was transferred to the 2017 tax year from the 2016 tax year of \$1,001.89 was effective on September 30, 2021, and one year from that date was September 30, 2022. Because appellant filed her refund claim on October 15, 2022, which was after April 15, 2019, and September 30, 2022, the claim for refund is properly barred under the one-year statute of limitations.

Appellant argues she is entitled to a full refund because she had a zero tax liability for the 2017 tax year, which FTB accepted. However, there is generally no reasonable cause or

equitable basis for suspending the statute of limitations.<sup>3</sup> (*Appeal of Benemi Partners, L.P., supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Without a legislatively enacted exception to the statute of limitations, OTA does not have the legal authority here to avoid a seemingly unfair or harsh outcome. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*) Accordingly, appellant is not entitled to an additional refund because she filed her refund claims outside the statute of limitations.

#### HOLDING

The statute of limitations bars appellant’s claim for an additional refund.

#### DISPOSITION

FTB’s action partially denying appellant’s claim for refund for the 2017 tax year is sustained.

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*Eddy Y.H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

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*Kenneth Gast*

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Kenneth Gast  
Administrative Law Judge

DocuSigned by:

*Natasha Ralston*

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Natasha Ralston  
Administrative Law Judge

Date Issued: 12/4/2023

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<sup>3</sup> R&TC section 19316 suspends the statute of limitations for refund claims for “financially disabled” taxpayers, but appellant has not raised it on appeal and the facts do not support its application here. (See R&TC, § 19316.)