

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
C. PERRY ) OTA Case No. 221011673  
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**OPINION**

Representing the Parties:

For Appellant: Elizabeth Segel, CPA

For Respondent: Grace A. Power, Attorney

For Office of Tax Appeals: John Yusin, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Perry (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$34,091 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 appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. On October 11, 2017, appellant timely filed his 2016 California income tax return within the automatic six-month extension. Appellant reported total tax of \$831, California income tax withholding credits of \$2,235, and claimed an overpayment of \$1,404, which FTB refunded.
2. On June 13, 2022, appellant filed a 2016 amended California income tax return reporting withholding (Form 592-B and/or 593) credits of \$34,091. FTB processed the amended return and treated it as a claim for refund, which FTB denied.

3. Appellant filed this timely appeal.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer 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 due date of the return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. For purposes of the one-year statute of limitations, any tax deducted and withheld during any calendar year shall be deemed to have been paid on the original due date for filing the return. (R&TC, § 19002(c)(1).) The taxpayer has the burden of proof to establish entitlement to a refund and that the refund claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for bars a refund.<sup>1</sup> (*Appeal of Benemi Partners, L.P., supra.*) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant's 2016 amended tax return, which was filed on June 13, 2022, is treated as his claim for refund. Since appellant timely filed his 2016 original return on October 11, 2017, which is within the automatic six-month extension, the first four-year statute of limitations is applicable. Under the first four-year statute of limitations, appellant was required to file a refund

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<sup>1</sup> Though not applicable here, financial disability due to a medically determinable physical or mental impairment is an example of an exception that may suspend the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

claim no later than October 11, 2021,<sup>2</sup> which is four years from the date appellant filed his timely return. Under the one-year statute of limitations, appellant was required to file a refund claim no later than April 15, 2018, which is one year from April 15, 2017, the date appellant's withholdings for the 2016 tax year were deemed paid. (R&TC, § 19002(c).) Appellant did not file his claim for refund until June 13, 2022, after both the four-year and one-year statute of limitations expired.

Appellant contends that he has reasonable cause for his failure to file a timely refund claim. Appellant asserts that as a beneficiary of a trust, he received an amended Schedule K-1 after he filed his original return, and that he was unaware he should also have received a Form 592 withholding statement,<sup>3</sup> or that he needed to file an amended return to receive a refund of the overpayment. Appellant indicates that due to COVID-19, he was unable to meet with an accountant to obtain advice, and that as soon as he was able to, appellant hired an accountant and filed the amended return requesting a refund of the overpayment. However, there is no reasonable cause exception or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) Moreover, appellant's difficulties in obtaining necessary tax documentation are not an exception to the claim for refund statute of limitations. (*Appeal of Jenkins* (81-SBE-069) 1981 WL 11797.) Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant also contends that his claim for refund is not barred by the one-year statute of limitations. Specifically, appellant contends that appellant received his Form 592 in 2022 and that the withholding credit of \$34,091 was transferred to his account in 2022. Therefore, appellant asserts that his claim for refund is timely. However, the specific date of remittance is not relevant here because R&TC section 19002(c)(1) deems that the withholding payment date in

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<sup>2</sup> FTB postponed the deadline for claiming 2016 refunds to May 17, 2021, due to the COVID-19 pandemic; however, the postponement has no impact here since May 17, 2021, predates October 11, 2021. (See R&TC, § 18572; FTB, *State Postpones Deadlines For Claiming 2016 Tax Refunds to May 17, 2021*, news release (April 26, 2021) <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> While unclear, it appears that appellant is referring to Form 592-B Withholding Tax Statement (Form 592), which the withholding agent provides to each payee showing the amount withheld and reported for the tax year. (See <https://www.ftb.ca.gov/forms/2022/2022-592-instructions.html#:~:text=Tax%20withheld%20on%20California%20source,amounts%2C%20and%20the%20witholding%20amounts.>)

this case is April 15, 2017. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P, citing Cal. Code Regs., tit. 18, § 19002(d)(1).) According to FTB records, a withholding credit of \$34,091 was applied to appellant’s 2016 tax account effective April 15, 2017, which is consistent with R&TC section 19002(c)(1). Appellant did not timely file a refund claim within the one-year or four-year statute of limitations; therefore, his refund claim is barred.

HOLDING

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

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Eddy Y.H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 1/16/2024