

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
P. SULLIVAN )  
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OTA Case No. 221212037

**OPINION**

Representing the Parties:

For Appellant: P. Sullivan

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: Ethan Choy, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code 19324, P. Sullivan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$21,945.77<sup>1</sup> for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

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

**FACTUAL FINDINGS**

1. FTB received information that appellant paid mortgage interest for the 2017 tax year. Based on the amount of mortgage interest paid by appellant, FTB estimated that appellant made sufficient income in 2017, which would require her to file a return for that year. Unable to locate such return, FTB issued a Demand for Tax Return (Demand) for tax year 2017 to appellant.

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<sup>1</sup> FTB’s claim for refund denial letter, dated September 6, 2022, disallowed a refund of the overpaid amount of \$21,945.77. FTB states that this amount is computed by subtracting a collection cost recovery fee of \$317.00 from the collection payments totaling \$22,262.77.

2. After appellant failed to respond to the Demand, FTB mailed a Notice of Proposed Assessment (NPA) to appellant. The NPA estimated appellant's income, proposed additional tax of \$12,827.00, penalties totaling \$6,413.50, plus interest, and a filing enforcement fee of \$93.00. The NPA became due and payable after appellant failed to timely protest the NPA.
3. FTB issued three collection notices requesting that appellant pay her liability for the 2017 tax year, and warning appellant that FTB would initiate a collection action against her should she fail to pay in a timely manner. Appellant did not make any payments by the deadlines provided in the collection notices.
4. Subsequently, FTB issued an Electronic Order to Withhold Personal Income Tax. On March 22, 2021, appellant's bank transmitted \$22,262.77 to FTB, which satisfied appellant's liability.
5. On July 25, 2022, appellant filed her 2017 tax return which reported California taxable income and total tax of zero, and an overpayment of \$22,263, for which appellant requested a refund.
6. FTB accepted the return but denied appellant's claim for a refund in the amount of \$21,945.77 on the grounds that appellant's claim 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 unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if filed on or before the extended due date; (2) four years from the original due date of the return (determined without regard to any extension of time to file); or (3) one year from the date of the 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.)

Here, appellant did not file her 2017 tax return until July 25, 2022, after the extended due date to file. Therefore, the first four-year statute of limitations does not apply. Appellant filed her return more than four years after the original due date of April 15, 2018. Therefore, appellant's claim for refund is barred under the second four-year statute of limitations, which expired on April 15, 2022, four years after the original due date. The date of the overpayment was March 22, 2021. Therefore, appellant is also barred under the one-year statute of limitations

because she filed her claim for refund on July 25, 2022, which was more than one year from the date of the overpayment.

Appellant provides no arguments or evidence to show that her claim for refund was timely. Appellant asserts that the collection of the funds created financial difficulties in addition to other difficulties appellant and her mother faced. However, there is no reasonable cause or equitable basis for suspending the statute of limitations.<sup>2</sup> (*Appeal of Benemi Partners, L.P.*, *supra.*) And although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

In addition, appellant argues that FTB is in violation of the Taxpayers' Bill of Rights and contends that she did not receive any notice from FTB that it was placing a hold or lien on her account. Appellant also contends that a hold was placed on her mother's bank account, and that the majority of the money collected by FTB belonged to her mother. Appellant asserts that she called FTB for two weeks to avert the transmission of the withheld funds but was unable to reach a representative.

There is no basis for Office of Tax Appeals (OTA) to consider these arguments. As noted above, appellant's claim for refund is barred under the statute of limitations. 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. (*Appeal of Benemi Partners, L.P.*, *supra.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Furthermore, FTB pursued collection action which resulted in an overpayment, as opposed to an overcollection. An "overcollection" occurs when the amount collected exceeds the amount actually due under the law as the result of clerical or mechanical error. (*Appeal of Cornbleth*, 2019-OTA-408P.) While an overcollection is not subject to the statute of limitations, a claim for refund on an overpayment is subject thereto. (*Ibid.*) Here, there was no clerical or mechanical

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<sup>2</sup> The statute of limitations may only be suspended in cases of individual taxpayers who are properly determined to be "financially disabled." (i.e., 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.) (R&TC, § 19316; *Appeal of Estate of Barbara D. Gillespie*, 2018-OTA-052P.) Appellant does not provide any argument or evidence to show she was financially disabled within the meaning of R&TC section 19316.

error by FTB in its assessment, as its assessment was accurate based on the information available at the time the assessment was made.<sup>3</sup>

Additionally, except for reimbursement claims under R&TC section 21013, which is not applicable in this case, OTA does not have jurisdiction to hear matters based on alleged violations of the Taxpayer Bill of Rights. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Accordingly, appellant has not shown that her claim for refund was timely.

HOLDING

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

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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

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

DocuSigned by:  
*Keith T. Long*  
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Keith T. Long  
Administrative Law Judge

Date Issued: 9/12/2023

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<sup>3</sup> See FTB Technical Advice Memorandum 2007-01: <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2007-01.pdf>.