

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
S. KHAN ) OTA Case No. 230412995  
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**OPINION**

Representing the Parties:

For Appellant: S. Khan

For Respondent: Lawrence Xiao, Attorney

For the Office of Tax Appeals: Tom Hudson, Attorney

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Khan (appellant) appeals the Franchise Tax Board’s (FTB’s) action denying appellant’s claim for refund of \$1,433 for the 2017 tax year.

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 refund of \$1,433 for the 2017 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2017 California Resident Income Tax Return (return) by either the due date of April 15, 2018, or the six-month extension deadline of October 15, 2018.
2. According to FTB’s records, FTB did not issue appellant a request for a 2017 tax return yet received appellant’s 2017 return on December 15, 2022.<sup>1</sup> On the return, appellant

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<sup>1</sup> Appellant’s 2017 return is signed, but there is no date in the box marked “Date” beside the signature box.

- reported an overpaid tax of \$1,433, consisting of an earned income tax credit of \$1,386 and California income tax withheld of \$47.
3. FTB treated appellant's return as a claim for refund, but denied it because FTB determined that the statute of limitations expired.
  4. Appellant then filed this timely appeal.
  5. According to appellant's 2017 IRS account transcript, the IRS received appellant's 2017 federal income tax return on January 11, 2023.

### 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 latest of the following three timeframes: (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 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.

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The burden of proof requires proof by a preponderance of the evidence, except as otherwise provided by law. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances the taxpayer asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so at a later date. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*)

On appeal, appellant asserts that she timely filed her 2017 return by mail on April 27, 2021, and again after purportedly receiving a request from FTB on November 28, 2022. Appellant contends that she timely filed both returns.

Here, appellant filed her 2017 return, which is treated as a claim for refund, on December 15, 2022. Because appellant did not timely file her return within the extension period ending on October 15, 2018, the first four-year statute of limitations described in R&TC section 19306(a) is inapplicable. The second four-year statute of limitations described therein ended on April 15, 2022 (i.e., four years from the 2017 return's due date regardless of any extension), so appellant's December 15, 2022 claim for refund was not timely filed within the second four-year statute of limitations.

The one-year statute of limitations only allows a refund of overpayments made within one year of appellant's December 15, 2022 claim for refund (i.e., payments made on or after December 15, 2021). The overpayments at issue here total \$1,433 and consist of an earned income tax credit of \$1,386 and California income tax withheld of \$47. The balance of the earned income tax credit is refundable as an overpayment if it exceeds a taxpayer's tax liability and any other amounts due for a taxable year (R&TC, §§ 17052(f), 19354), and such overpayment is deemed to have been paid on the due date for filing a return for that taxable year regardless of any extension (see R&TC, § 19363). Similarly, the date of all withholding payments is deemed to be the original due date for filing the income tax return. (Cal. Code Regs., tit. 18, § 19002(d)(1).) Here, the due date of appellant's 2017 return regardless of any extension is April 15, 2018, and both the earned income tax credit of \$1,386 and the withholding payment of \$47 are deemed to have been paid on that date. However, the April 15, 2018 payment date predates December 15, 2021, so the overpayment of \$1,433 is beyond the purview of appellant's December 15, 2022 claim for refund under the one-year statute of limitations.

For the reasons stated, appellant's claim for refund of \$1,433 is not timely under any of the three statutes of limitations described in R&TC section 19306(a).

Regarding appellant's assertion that she filed her 2017 return on April 27, 2021, appellant has not provided any evidence establishing that she filed a return prior to December 15, 2022. In addition, appellant's 2017 federal account transcript indicates that appellant filed her 2017 federal income tax return on January 11, 2023, which does not support appellant's assertion that she timely filed her 2017 return by April 15, 2022. Accordingly, OTA finds that appellant has not met her burden of proving that her claim for refund was timely.

HOLDING

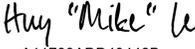
The statute of limitations bars appellant’s claim for refund of \$1,433 for the 2017 tax year.

DISPOSITION

FTB’s action denying appellant’s claim for refund of \$1,433 is sustained.

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Andrew Wong  
Administrative Law Judge

We concur:  
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Sheriene Anne Ridenour  
Administrative Law Judge

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Huy “Mike” Le  
Administrative Law Judge

Date Issued: 12/20/2023