

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

In the Matter of the Appeal of: ) OTA Case No. 230312805  
A. PROCTOR AND )  
T. PROCTOR )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: A. Proctor  
T. Proctor

For Respondent: Ricky Martorana, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Proctor and T. Proctor (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$5,080.34 for the 2016 tax year.

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

**ISSUE**

Whether appellants filed a timely claim for refund for the 2016 tax year.

**FACTUAL FINDINGS**

1. In 2016, appellants were California residents, but did not file a timely 2016 California income tax return.
2. FTB received information that appellants earned taxable wages in 2016 that indicated they had a California filing requirement. Using appellants’ wage information, FTB estimated appellants’ taxable income and issued a Notice of Proposed Assessment on June 4, 2018, that went final after appellants did not timely respond.

3. FTB initiated collection action on March 12, 2019, and received payments from appellant-husband's employer starting on May 21, 2019. The last payment was on March 10, 2020.
4. Appellant-husband was a member of the United States Army Reserve, and reported for active duty on or around January 9, 2020. Appellant-husband served outside of the United States in support of Operation Enduring Freedom (Spartan Shield), a contingency operation, and returned to a demobilization station in Ft. Hood, Texas on October 17, 2020.
5. Appellants filed their 2016 California income tax return on October 11, 2022, and requested a refund of taxes paid. FTB accepted the return and issued a letter on January 25, 2023, denying appellants' request for a refund because the statute of limitations had expired prior to appellants' filing of their 2016 return, which FTB treated as a claim for refund.
6. Appellants filed this timely appeal.

#### DISCUSSION

The general statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations to file a claim for refund provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed 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 for filing a return for the year at issue (without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Here, the applicable statute of limitations<sup>1</sup> expired on April 15, 2021;<sup>2</sup> that is, “four years from the last day prescribed for filing the return (determined without regard to any extension of time for filing the return) . . . .” (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 Estate of Gillespie*, 2018-OTA-052P.) There is no equitable basis for suspending the statute of limitations.

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<sup>1</sup> The second four-year statute of limitations ends the latest, since the one-year statute of limitations expired March 10, 2021 (one year from the date of overpayment). (See R&TC, § 19306(a).)

<sup>2</sup> Due to the COVID-19 pandemic, FTB extended the deadline to May 17, 2021. (See <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>.) However, since appellants did not file their claim for refund by May 17, 2021, the extension does not apply.

(*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) It is uncontroverted that appellants filed their 2016 California income tax return on October 11, 2022, more than a year after the general statute of limitations expired for the 2016 tax year.

Appellants argue the statute of limitations did not expire before the filing of their 2016 California income tax return because appellant-husband “was deployed in a combat zone.” Internal Revenue Code (IRC) section 7508(a)<sup>3</sup> provides the statute of limitations to file a claim for refund is tolled for the amount of time of service in the Armed Forces, if such service includes deployment outside the United States while participating in a contingency operation, plus 180 days. Appellant-husband served in the Armed Forces and was deployed outside the United States in support of Operation Enduring Freedom (Spartan Shield), a contingency operation, from January 9, 2020, until October 17, 2020. Thus, appellant-husband’s total time of service for purposes of tolling the statute of limitations was 463 days, which includes 283 days of service and 180 days provided for by statute. Consequently, the statute of limitations for appellants to file a timely claim for refund expired 463 days after the original expiration date, or July 22, 2022.

However, despite the tolling period of the statute of limitations for appellant-husband’s service, appellants still did not file a timely claim for refund. Appellants filed their 2016 return on October 11, 2022, which is more than two months after the statute of limitations expired. OTA has no authority to authorize a refund since an untimely filing bars a claim for refund “regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected.” (*Appeal of Estate of Gillespie, supra.*) Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.) There is no other evidence in the record that shows appellants filed a timely claim for refund.<sup>4</sup>

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<sup>3</sup> Incorporated by R&TC section 18571(a).


<sup>4</sup> Appellants argue the Service Members Civil Relief Act (SCRA) authorizes additional tolling of the statute of limitations. However, OTA finds no evidence in the record that the SCRA allows service members additional time to file a claim for refund beyond the extension of time that IRC section 7508(a) provides.

HOLDING

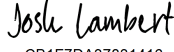
Appellants did not file a timely claim for refund for the 2016 tax year.

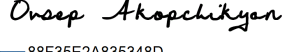
DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:  
  
F8E81582726F448...  
Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
CB1E7DA37831416  
Josh Lambert  
Administrative Law Judge

DocuSigned by:  
  
88F35E2A835348D...  
Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 3/12/2024