



interest. FTB applied appellant M. Fong's income tax withholding of \$4,656 to appellants' 2016 tax year account effective April 15, 2017. The NPA credited the income tax withholding made on behalf of appellant M. Fong to offset part of the proposed tax. Appellant M. Fong did not timely protest the NPA, so it went final (i.e., the proposed liability for the 2016 tax year became due and payable). FTB later issued collection notices and imposed a collection cost recovery fee of \$317.

3. On June 15, 2019, appellants made a payment of \$10,497.76.<sup>1</sup>
4. Subsequently, appellants untimely filed a joint 2016 return on September 15, 2021, reporting zero total tax, \$25,154 in payments,<sup>2</sup> and requested a refund of the \$25,154 overpayment. FTB accepted the return as filed and treated it as a claim for refund; however, FTB computed a larger overpayment of \$35,334.76.<sup>3</sup>
5. On January 18, 2022, FTB denied the claim for refund because appellants filed the return claiming the refund after the statute of limitations expired.
6. 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 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 (*Gillespie*).

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<sup>1</sup> On January 11, 2021, FTB notified appellant M. Fong that he had nonwage withholding credits of \$10,249 available to be claimed for the 2016 tax year, but FTB had no record of any return. FTB asked appellant M. Fong to timely file or send a copy of a return, if filed, to claim a refund or credit of the withholding credits.

<sup>2</sup> The payments total of \$25,154 is comprised of income tax withholding of \$4,656 and other withholding of \$20,498 ( $\$4,656 + \$20,498 = \$25,154$ .) The record does not indicate when the tax was withheld by the withholding agent or paid to FTB.

<sup>3</sup> The overpayment calculated by FTB is comprised of income tax withholding of \$4,656, appellants' payment of \$10,497.76 made on June 15, 2019, and other withholding of \$20,498, which are offset by a collection cost recovery fee of \$317 ( $\$4,656 + \$10,497.76 + \$20,498 - \$317 = \$35,334.76$ ). Appellants did not include their \$10,497.76 payment in the payments total reported on the return.

Here, appellants' return was untimely filed; therefore, the four-year statute of limitations for returns timely filed pursuant to an extension is inapplicable. Appellants' return was due on April 15, 2017. (See R&TC, § 18566.) In response to COVID-19, FTB postponed the deadline to file a claim for refund for the 2016 tax year from April 15, 2021, to May 17, 2021.<sup>4</sup> Thus, under the four-year statute, appellants were required to file their claim for refund by May 17, 2021. However, appellants untimely filed their 2016 claim for refund on September 15, 2021, nearly four months later. Thus, OTA finds no error in FTB's determination that appellants' claim for refund was untimely under the four-year statute of limitations.

Appellants' claim for refund was also untimely under the one-year statute of limitations. For purposes of R&TC section 19306, income tax withholding is generally deemed or considered paid on the due date for the applicable return. (See R&TC, § 19002(c)(1) [any tax actually deducted and withheld in respect of the income recipient is deemed paid on the due date for filing the return], (d)(2) [a tax with respect to an amount paid before the due date for that return is considered paid on the due date].) The original due date of the 2016 return was April 15, 2017, and therefore, appellants' income tax withholding of \$4,656 and other withholding of \$20,498 is deemed to have been paid on April 15, 2017. Appellants' claim for refund was not filed within one year of April 15, 2017.

In addition, FTB Notice 2020-02 postponed the statute of limitations to July 15, 2020, for claims that would otherwise expire between March 12, 2020, and July 15, 2020 (the postponement period). The due date to file a timely claim for refund for the June 15, 2019 payment of \$10,497.76 expired on June 15, 2020, during the postponement period. Therefore, under FTB Notice 2020-02, a claim for refund filed on July 15, 2020, for the June 15, 2019 payment would be considered timely. However, appellants filed the claim for refund on September 15, 2021, long after the postponed due date for that payment.

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). 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,

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<sup>4</sup> 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>.

or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellants do not dispute they untimely filed the claim for refund. Rather, they request that the statute of limitations be waived in their case. Appellants assert that: they initially delayed filing their taxes pending a decision from their employer on a disability retirement case; they thought their taxes were filed on June 15, 2019, when they paid FTB; they thought filing the return “was similar to filing an amendment to the one FTB had made and taken the taxes already for that year”; and that, due to the COVID-19 pandemic and personal circumstances, they were unable to access their 2016 tax records at their residence to timely file the return.

However, appellants’ assertions are generally reasonable-cause type arguments which cannot extend the statute of limitations. (*Benemi, supra.*) Moreover, while appellants’ personal circumstances are unfortunate, they are not legally sufficient to toll the statute of limitations. FTB notified taxpayers that, due to the COVID-19 pandemic, the applicable four-year statute of limitations for claims for refund for the 2016 tax year would be considered timely if filed by May 17, 2021.<sup>5</sup> Because appellants did not file their claim for refund until September 15, 2021, it is time-barred. (See *Benemi, supra.*)

Appellants further assert that it would be a financial hardship to be denied their refund.<sup>6</sup> However, OTA has no authority to grant relief except where the law specifically allows. (*Gillespie, supra; Benemi, supra.*)

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<sup>5</sup> See footnote 2, above.


<sup>6</sup> Appellants have not argued that any exception to the statute of limitations applies, such as R&TC section 19316, which suspends the statute of limitations for refund claims and thus extends the time for filing a claim if the taxpayer shows she or he is “financially disabled,” as defined by that provision. OTA’s review of the record does not indicate this statutory exception applies here.

HOLDING

The statute of limitations bars appellants' claim for refund.


DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Kenneth Gast  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 3/1/2024