

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230713950  
**I. LEWIS (WAUGH)** )  
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**OPINION**

Representing the Parties:

For Appellant: I. Lewis (Waugh)  
 For Respondent: AnaMarija Antic-Jezildzic,  
 Program Specialist I

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Lewis (Waugh) (appellant) appeals an action by respondent Franchise Tax Board (FTB) partially denying appellant's claim for refund of \$2,721.93 for the 2018 tax year.<sup>1</sup>

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals decides the matter based on the written record.

**ISSUE**

Whether appellant's claim for refund for the 2018 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely California income tax return for the 2018 tax year.
2. On July 19, 2022, FTB issued a Demand for Tax Return (Demand) after receiving information that appellant earned sufficient income in 2018 to create a filing requirement.

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<sup>1</sup> Appellant filed a claim for refund of tax in the amount of \$2,246. On June 29, 2023, FTB issued a refund of \$1,493.93 to appellant. FTB denied the remaining claim for refund.

- FTB did not receive a timely response to the Demand.
3. On September 23, 2022, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess tax of \$3,087. After applying withholding credits of \$2,709 the NPA reflected a tax balance due of \$378, a late filing penalty of \$135, a demand penalty of \$771.75, and interest. Appellant did not timely respond and the NPA became final.
  4. FTB initiated collection actions. During the period January 3, 2023, through April 22, 2023, appellant made payments totaling \$296.72. Additionally, on April 22, 2023, FTB credited an overpayment of \$1,197.21 from the 2022 tax year to appellant's liability for 2018, which satisfied the liability.
  5. On June 15, 2023, appellant filed an untimely California resident income tax return, which FTB treated as a claim for refund.
  6. FTB refunded \$1,493.93 to appellant and denied the remaining balance of \$1,228. By letter dated July 5, 2023, FTB explained that it could not refund the remaining balance because the statute of limitations had expired.
  7. This timely appeal followed.

#### DISCUSSION

R&TC section 19306(a) provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within four years from the date of the original tax return, or four years from the date the return was filed if it was filed by the automatic extended due date, or one year from the date of the overpayment, whichever is later. The taxpayer has the burden of proving a timely claim and their entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

If a taxpayer places a return in a United States mailbox before the statutory filing deadline and there is no record of that return being received, the taxpayer must offer evidence, such as a registered or certified mail receipt, that the return was timely filed. (*Appeal of Fisher*, 2022-OTA-337P.) The document or payment must be contained in an envelope, properly addressed to the agency, officer, or office with which the document is required to be filed or to which the payment is required to be paid. (Treas. Reg. § 301.7602-1(c)(1)(i).) Taxpayers “[assume] the risk that the postmark will bear a date on or before the last date ... prescribed for filing the [return],” and have the burden of proving the date of the postmark or the return was timely mailed. (Treas. Reg. § 301.7602-1(c)(1)(iii).) Internal Revenue Code (IRC) section 7502

and Treasury Regulation section 301.7502-1 provide that, aside from proof of actual timely delivery, which is not present in this appeal, a taxpayer can use a postmarked envelope or a postmarked registered or certified mailing receipt to prove the date a document was filed with the IRS. R&TC section 21027 provides that Treasury Regulation section 301.7502-1, as revised on January 10, 2001, is also applicable to filings with FTB.

Appellant contends that they filed a timely claim for refund in the form of a return during May 2020, and FTB lost or misplaced that return. Appellant has not provided any evidence such as a postmarked registered or certified mailing receipt to prove the date the document was filed with FTB. As such, appellant has not met their burden of showing that a claim for refund was filed during May 2020. Instead, the available evidence shows that appellant filed their claim for refund on June 15, 2023. Because appellant failed to file a 2018 tax return by the due date of April 15, 2019, or within the extension period, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later on April 15, 2023. (R&TC, § 19306(a).) Thus, under R&TC section 19306, the four-year statute of limitation expired prior to appellant filing the claim for refund.

The alternative one-year statute of limitation applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) On June 29, 2023, FTB issued a refund for \$1,493.93, for the payments that appellant made during the period January 3, 2023, through June 1, 2023. The remaining amount of the claim was for appellant's withholding payments. Payments made via withholding are deemed paid as of the original due date of the return. (R&TC, § 19002(c)(1).) Appellant's withholding is treated as paid on April 15, 2019, and appellant filed the claim for refund more than one year later on June 15, 2023. Therefore, the remaining claim for refund amounts are barred under the one-year statute of limitations period.


A taxpayer's failure to file a claim for refund by the applicable due date, for whatever reason, bars them from a later claim. (*Appeal of Estate of Gillespie, supra.*) The language of the statute must be strictly construed, and there is no reasonable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., 2020-OTA-144P.*) Accordingly, because appellant did not file a timely refund claim with respect to their withholding credits under either the four-year or one-year statute of limitations for 2018, appellant is barred from seeking a refund.

HOLDING

Appellant's claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action in partially denying appellant's claim for refund is sustained.

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Keith T. Long  
Administrative Law Judge

Date Issued: 4/2/2024