

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
C. GILLOTTI ) OTA Case No. 230613612  
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**OPINION**

Representing the Parties:

For Appellant: C. Gillotti  
For Respondent: Sarah J. Fassett, Attorney  
For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Gillotti (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,823.28 for the 2017 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant is entitled to a refund for the 2017 tax year.

**FACTUAL FINDINGS**

1. Respondent requested, but did not timely receive, a 2017 California income tax return (Return) from appellant.
2. Consequently, respondent issued a Notice of Proposed Assessment (NPA) that proposed to assess tax, a late-filing penalty, and interest based on an estimate of appellant’s income. Appellant did not respond to the NPA and, consequently, it went final and became due and payable.

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<sup>1</sup> On her 2017 California income tax return, appellant requested a refund of \$851. However, respondent computed an overpayment of \$1,823.28, which is the same as the disputed amount stated in appellant’s appeal letter.

3. From December 15, 2020, through January 15, 2021, respondent took collection action against appellant and collected payments which satisfied the deficiency assessment.
4. On March 15, 2023, appellant filed her Return with a married filing separate status, requesting a refund of \$851.
5. Respondent processed the Return and computed an overpayment of \$1,823.28.
6. However, respondent did not refund or credit this overpayment to appellant because it determined that appellant's refund claim was untimely.
7. This timely appeal followed.

### DISCUSSION

Appellant concedes that her refund claim was untimely but requests that the claim nevertheless be granted.<sup>2</sup> Appellant argues that the statute of limitations does not apply here because the late filing was not her fault. Rather, she claims that the late filing was due to her spouse's procrastination and uncooperativeness in filing a joint California income tax return, which eventually forced appellant to file separately.

Appellant is mistaken as to the application of the statute of limitations, which must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) In other words, a taxpayer's untimely filing of a refund claim for *any reason* bars a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The Office of Tax Appeals does not have the authority to abrogate the statute of limitations to achieve a more equitable result for taxpayers or to avoid a seemingly harsh outcome. (*Ibid.*) Although a strict application of the statute of limitations may result in occasional unfairness, it is necessary in order to maintain a more workable tax enforcement system and is redeemed by the clarity imparted. (*Ibid.*)

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<sup>2</sup> The law generally requires that taxpayers file their refund claims by the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment. (R&TC, § 19306(a).)

HOLDING

Appellant is not entitled to a refund for the 2017 tax year.

DISPOSITION

Respondent’s action is sustained.

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*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

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

Date Issued: 6/4/2024