

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**J. AZURE** ) OTA Case No. 231014617  
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**OPINION**

Representing the Parties:

For Appellant: Hubert J. Johnson, Representative

For Respondent: AnaMarija Antic-Jezildzic,  
Program Specialist

For Office of Tax Appeals: Nguyen Dang, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Azure (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,383.45 for the 2016 tax year.

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 of his overpayment for the 2016 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2016 California income tax return (Return).
2. After requesting but not receiving a Return from appellant, respondent issued a Notice of Proposed Assessment (NPA) for tax and various other charges based on an estimate of appellant’s income.
3. Appellant did not protest the NPA and it became due and payable.
4. Respondent initiated collection activity and received several payments from December 30, 2019, through October 1, 2020.

5. On June 23, 2023, appellant filed a Return reporting zero total tax and claiming a refund of \$97.
6. Respondent processed appellant's Return and after accounting for various other charges and payments, computed an overpayment of \$1,383.45.
7. Respondent notified appellant that this overpayment would not be credited or refunded to him because appellant's Return was filed outside the limitation period for making a refund claim.
8. This timely appeal followed.

### DISCUSSION

Appellant does not dispute that his Return was filed after the statute of limitations for making a refund claim had expired.<sup>1</sup> Appellant, however, argues that his overpayment should be refunded to him because respondent levied appellant despite that he had no tax liability for the 2016 tax year.

The statute of limitations for filing a refund claim must be strictly construed, meaning that a taxpayer's untimely filing of a refund claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even if the tax was not owed in the first place or was erroneously, illegally, or wrongfully collected. (*Ibid.*) While the foregoing is dispositive, appellant's attempt to shift responsibility for the overpayment to respondent is without merit. Appellant had ample opportunity to file a Return prior to respondent's levy, and it is appellant's failure to do so which caused the overpayment.

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<sup>1</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 of his overpayment for the 2016 tax year.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

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

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 6/13/2024