

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

In the Matter of the Appeal of: )  
S. SCURICH ) OTA Case No. 230914249  
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**OPINION**

Representing the Parties:

For Appellant: S. Scurich

For Respondent: Caitlin S. Russo, Legal Assistant

For Office of Tax Appeals: Louis Ambrose, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Scurich (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,346.66 for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided 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. FTB received third-party information that appellant had received income during 2018 sufficient to trigger the requirement to file a 2018 California tax return.
2. Because appellant did not file a return, FTB issued appellant a Request for Tax Return dated July 27, 2020 (Request). The Request stated that FTB received information that appellant received proceeds from a broker and/or barter exchange during 2018 which indicated she may have a filing requirement, and it requested that appellant respond by August 26, 2020. The Request provided appellant with instructions for filing a 2018

- return and stated that if appellant failed to provide a response by the due date, FTB would assess a tax based on available information, and impose a late filing penalty and applicable interest. FTB's records reflect that appellant did not respond.
3. FTB issued appellant a Notice of Proposed Assessment (NPA) dated October 16, 2020, which estimated appellant's income for 2018 based on federal income information. The NPA proposed a tax liability of \$4,662 and a late filing penalty of \$1,165.50, plus interest, totaling \$6,314.56. Appellant did not protest the NPA, and it became due and payable.
  4. FTB issued appellant a State Income Tax Balance Due Notice and an Income Tax Due Notice dated January 19, 2021, and March 3, 2021, respectively. Appellant did not submit payment by the due date stated in either notice, and FTB imposed a collection cost recovery fee and commenced collection activity. FTB records show that a payment of \$6,820.88 was received on September 14, 2021, which satisfied the balance due.
  5. Appellant subsequently filed a 2018 California return received by FTB on May 30, 2023. The return reported a tax liability of \$9,597. The return also reported California income tax withheld of \$9,521, resulting in a tax due of \$76. Appellant submitted a payment of \$76 with the return. FTB processed the return and treated it as a claim for refund. FTB transferred the payment of \$76, plus \$0.22 of interest, to appellant's 2020 tax year account. Appellant's 2018 tax year account reflected an overpayment of \$6,346.66, which included withholding of \$9,521 and the September 14, 2021, bill payment of \$6,820.88, minus a tax liability of \$9,597, late filing penalty of \$76, interest of \$18, a collection cost recovery fee of \$316, and a write-off of \$11.78.
  6. FTB issued appellant a Statute of Limitations notice dated June 26, 2023, informing appellant that appellant's 2018 tax year account reflected an overpayment of \$6,346.66, but that FTB cannot refund or credit that amount because the claim was made after the limitations period had expired.
  7. Appellant filed this timely appeal.

### DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's untimely filing of a claim for refund for any reason within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Because appellant did not file a timely return, the applicable statutes of limitation in this appeal are the later of four years from the last day prescribed for filing the tax return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).)

For the 2018 tax year, the four-year statute of limitations expired on April 15, 2023, four years from the due date of the tax return of April 15, 2019. Appellant's 2018 tax return was filed on May 30, 2023, after the expiration of the four-year statute of limitations. Therefore, FTB is barred from refunding or crediting any overpayment for the 2018 tax year under the four-year statute of limitations.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) For purposes of computing the statute of limitations on refund claims, amounts withheld are deemed to have been paid on the original due date for filing the return; therefore, appellant's withholding of \$9,521 is deemed paid on April 15, 2019. (RTC, § 19002(c)(1).) FTB also received a payment of \$6,820.88 for the 2018 tax year on September 14, 2021. Because appellant did not file her 2018 return until May 30, 2023, and both of these payments were made prior to May 30, 2022, the one-year statute of limitations bars a refund or credit of the overpayment for the 2018 tax year.<sup>1</sup>

Appellant asserts that she was unable to file a timely return due to "several life hardships" that occurred, including the emergency stabilization of her house foundation, the

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<sup>1</sup> Appellant also made a return payment of \$76 which FTB applied to appellant's 2020 tax year account.

COVID-19 pandemic, health issues, and multiple years of winter storm damage. In view of those circumstances, appellant requests an exception to the limitations period barring her claim for refund. While OTA is sympathetic to the difficulties appellant describes, neither “ill health nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund.” (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)<sup>2</sup>

HOLDING

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

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

We concur:  
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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

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Veronica I. Long  
Administrative Law Judge

Date Issued: 6/26/2024

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<sup>2</sup> Appellant has also not provided evidence to show she was “financially disabled” under R&TC section 19316, as requested by FTB. (See *Appeal of Estate of Gillespie*, *supra*.)