

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

In the Matter of the Appeal of: ) OTA Case No. 230513256  
**J. FLORES** )  
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**OPINION**

Representing the Parties:

For Appellant: Angelica Flores, Representative  
For Respondent: Paige Chang, Attorney  
Maria Brosterhous, Attorney Supervisor  
For Office of Tax Appeals: Thomas Lo Grossman, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Flores (appellant) appeals an action denying appellant’s claim for refund of \$4,680.68 for the 2017 tax year.

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(b).) Office of Tax Appeals (OTA) Administrative Law Judge Veronica I. Long held an oral hearing for this matter electronically on July 24, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether appellant’s claim for refund for 2017 is barred by the statute of limitations.

### FACTUAL FINDINGS

1. Appellant did not file a timely 2017 California income tax return.
2. Respondent received information indicating that appellant may have had sufficient income to prompt a filing requirement. Accordingly, respondent issued appellant a Request for Tax Return (Request) on April 23, 2019.
3. Respondent did not receive a response to the Request. Respondent subsequently issued a Notice of Proposed Assessment (NPA) on July 29, 2019. The NPA proposed an assessment of \$5,054. Appellant did not timely protest the NPA and the assessment became final.
4. Respondent initiated collection activity and on November 30, 2020, FTB received payment in full on appellant's account for the 2017 tax year through a levy on appellant's bank account.
5. Shortly thereafter, appellant called respondent regarding respondent's collections activities.
6. On December 1, 2020, appellant's return preparer attempted to fax copies of appellant's federal return and W-2 statement to respondent.
7. On December 14, 2020, appellant's return preparer attempted to fax copies of appellant's federal return and W-2 statement to respondent for a second time. On April 26, 2021, appellant attempted to submit the same documents again by fax.
8. On March 27, 2023, appellant filed a 2017 California Resident Income Tax Return, reporting total due of \$522.
9. Respondent treated appellant's return as a claim for refund and denied it as untimely.
10. This timely appeal followed.

### DISCUSSION

R&TC section 19306 provides, in relevant part, that no credit or refund may 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 pursuant to an extension of time to file; (2) four years from the date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) For purposes of R&TC section 19306, payments made through respondent's collection actions are deemed paid on the date of receipt.

(R&TC, § 19383.) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

To determine the applicable statute of limitations period, the date of the claim for refund must be ascertained. Respondent asserts that the date of the claim for refund is March 27, 2023, the date appellant filed his return. Under respondent's approach, the applicable four-year statute of limitations period expired on April 15, 2022, because appellant's 2017 return was originally due on April 15, 2018, and the one-year statute of limitations expired November 30, 2021, one year from the date of the November 30, 2020 payment. Thus, if respondent's approach is followed, appellant's claim for refund would be untimely and refund would be barred by the statute of limitations.

Appellant contends that he works out of state and was unable to timely respond to respondent's notices. Appellant contends that his representative contacted respondent and provided copies of his federal return and W-2 statements to respondent via fax on December 1, 2020, December 14, 2020, and April 26, 2021. Appellant contends that these communications were within the statute of limitations period. If appellant's December 2020 fax communications were considered to be a claim for refund, they would be within the one-year statute of limitations period because they were made within one year of the November 30, 2020 payment on appellant's account.

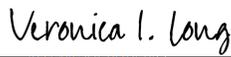
A valid refund claim must: 1) be in writing, 2) be signed by the taxpayer or the taxpayer's authorized representative, 3) and state the specific grounds upon which it is founded. (R&TC, § 19322.) For example, in *Shiseido Cosmetics (America), Ltd. v. FTB* (1991) 235 Cal.App.3d 478, 491, the court considered whether a taxpayer writing "paid under protest" on its payment constituted a valid claim for refund. In holding that it did not, the court reasoned that the words did not constitute a claim because they did not demand a refund or specify grounds for a refund. (*Id.* at p. 492.) While appellant's assertions are sympathetic and understandable, the faxes of appellant's federal return and W-2 do not constitute a timely claim for refund as a matter of law because they do not request a refund or specify grounds for a refund. The untimely filing of claim for refund bars a suit for refund even where the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Estate of Gillespie, supra.*) Accordingly, because appellant did not file a valid claim for refund prior to April 15, 2022, appellant's claim for refund is barred by the statute of limitations.

HOLDING

Appellant's claim for refund for 2017 is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained in full.

Signed by:  
  
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Veronica I. Long  
Administrative Law Judge

Date Issued: 10/11/2024