

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240516071
G. MERRILL AND)	
F. MERRILL)	
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)	

OPINION

Representing the Parties:

For Appellants:	G. Merrill and F. Merrill
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For Respondent:	Rosemary Villasenor, Senior Legal Analyst
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For Office of Tax Appeals:	Nguyen Dang, Attorney
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K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Merrill and F. Merrill (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$13,957 for the 2018 tax year.¹

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellants are entitled to a refund or credit of their overpayment for the 2018 tax year.

¹ FTB explains in its opening brief that the disputed amount on appeal is \$13,957, which is the amount of appellants' overpayment for the 2018 tax year.

FACTUAL FINDINGS

1. On December 15, 2023, appellants late filed their joint 2018 California income tax return (Return), reporting \$0 total tax and an overpayment of \$13,957.
2. FTB accepted the Return as filed.
3. Treating the Return as a claim for refund, FTB issued a claim denial notice informing appellants that their overpayment could not be refunded or credited to them because the Return was filed outside the statute of limitations for making a refund claim.
4. This timely appeal followed.

DISCUSSION

Appellants concede that their refund claim was untimely filed.² However, appellants request that their untimely refund claim be granted due to a multitude of personal difficulties, which includes the failure of their tax return preparer to timely file the Return.

Although OTA is sympathetic to the situation described by appellants, the statute of limitations for filing a refund claim must be strictly construed. In other words, except in very limited situations which are not present here,³ 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.*) Although the result of fixed deadlines may appear harsh, the occasional unfairness is necessary to allow for a more workable tax system and is redeemed by the clarity imparted. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

² 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).)

³ R&TC section 19316 suspends the running of the statute of limitations during any period where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months.

HOLDING

Appellants are not entitled to a refund or credit of their overpayment for the 2018 tax year.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

We concur:

Signed by:

Veronica I. Long

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Veronica I. Long
Administrative Law Judge

DocuSigned by:

Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

Date Issued: 2/11/2025