

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

In the Matter of the Appeal of:	)	OTA Case No. 240215356
<b>J. RUIZ</b>	)	
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**OPINION**

Representing the Parties:

For Appellant: J. Ruiz

For Respondent: Sarah J. Fassett, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ruiz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$2,101.67 for the 2015 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 panel member. (Cal. Code Regs., tit. 18, § 30209.05.)

Appellant 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).<sup>1</sup>

**ISSUE**

Whether the statute of limitations bars appellant's claim for refund for the 2015 tax year.

**FACTUAL FINDINGS**

1. On April 15, 2016, appellant timely filed a 2015 California Resident Income Tax Return (Return).
2. FTB received information indicating that the IRS audited appellant's 2015 federal income tax return and made an adjustment increasing appellant's reported taxable wages. Appellant did not report the federal adjustments to FTB.

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<sup>1</sup> Appellant failed to complete the Response to Notice of Oral Hearing; therefore, the appeal has been removed from oral hearing calendar.

3. On August 1, 2019, FTB sent a Notice of Proposed Assessment (NPA) to appellant for the 2015 tax year and followed the same federal adjustment in accordance with California law. In relevant parts, the NPA explained that the proposed additional tax and applicable interest would become due and payable unless appellant filed a protest. FTB did not receive a protest within the specified time.
4. On October 28, 2019, FTB issued a State Income Tax Balance Due Notice, summarizing that the balance due was \$2,101.67 for the 2015 tax year.
5. On November 15, 2019, FTB received appellant's payment of \$2,101.67, which FTB gave an effective date of October 28, 2029.
6. On February 8, 2021, appellant informed FTB that he was a victim of identity theft. Appellant noted that the IRS had already issued a refund and a notice confirming the removal of unreported wage income. An FTB representative advised appellant to file a protest and submit all related information received from the IRS.
7. On July 10, 2023, appellant contacted FTB regarding the NPA. FTB again advised appellant to protest the NPA and submit documentation from the IRS indicating that the federal determination had been reversed.
8. On September 15, 2023, FTB received appellant's correspondence requesting a refund.
9. FTB notified appellant that the NPA was canceled, but the claim for refund was disallowed because it was filed beyond the statute of limitations.
10. This timely appeal followed.
11. On appeal, FTB submits an IRS Account Transcript indicating that on February 15, 2021, the IRS issued a federal refund and removed the prior federal tax assessment.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent 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 pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Additionally, when a change or correction is made or allowed by the IRS, a taxpayer may file a claim for refund within two years of the final federal determination. (R&TC, § 19311(a).) The taxpayer

has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, *supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*)

Appellant's claim for refund for the 2015 tax year was untimely filed on September 15, 2023. Here, the first four-year statute of limitations period is inapplicable because appellant's 2015 Return was not filed pursuant to an extension of time to file. Appellant does not meet the second four-year statute of limitations because the claim for refund was filed four years after the April 15, 2016 due date, which, in response to COVID-19, FTB postponed the due date for the claim of refund for the 2015 tax year to July 15, 2020.<sup>2</sup> Additionally, the one-year statute of limitations period is not met because appellant was required to file a refund claim no later than November 15, 2020, which is one year from the date when FTB received appellant's November 15, 2019 payment of \$2,101.67. Furthermore, appellant does not meet the timely claim for refund period for when a change or correction is made or allowed by the IRS. Appellant was required to file a refund claim no later than February 15, 2023, which is two years from when a correction was made by the IRS on February 15, 2021. (R&TC, § 19311(a).) Here, appellant did not file a claim for refund until September 15, 2023, which was beyond each of the applicable statute of limitations periods.

On appeal, it appears that appellant argues that the statute of limitations should not apply due to the COVID-19 pandemic. Appellant also contends that he tried "calling [FTB] constantly with no luck of any answer," and that "[e]ven the offices of [the] IRS were closed." However, appellant has not provided any arguments, and OTA is not aware of any legal basis upon which appellant can toll the statute of limitations under the specific facts from the record. This is especially true when the record indicates that on February 8, 2021, an FTB representative had already informed appellant to file a protest and submit the necessary information to request a refund and that the IRS finalized its correction on February 15, 2021. It

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<sup>2</sup> R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone certain tax-related deadlines. When the applicable statute of limitations to file a timely claim for refund expired during the period of March 12, 2020, through July 15, 2020, FTB considered the claim timely if filed on or before July 15, 2020. (FTB Notice 2020-02 (March 30, 2020), available at <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.)

was appellant's inaction that caused the statute of limitations to bar his claim for a refund. To reiterate, the language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

#### HOLDING

The statute of limitations bars appellant's claim for refund for the 2015 tax year.

#### DISPOSITION

FTB's action in denying appellant's claim for refund is sustained.

DocuSigned by:

*Eddy Y. H. Lam*

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Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 2/12/2025