

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 230212520
<b>R. PARCELL AND</b>	)	
<b>T. PARCELL</b>	)	
	)	
	)	

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**OPINION**

Representing the Parties:

For Appellants:	T. Parcell Jessica T. Monroe, Attorney
For Respondent:	Sarah Fassett, Attorney Cynthia Kent, Attorney Supervisor

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Parcell and T. Parcell (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$78,129 for the 2017 tax year.

Office of Tax Appeals (OTA) Panel Members Tommy Leung, Andrew Wong, and Keith T. Long held a virtual oral hearing for this matter on December 18, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether appellants' claim for refund for the 2017 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellants did not file a timely California income tax return for the 2017 tax year.
2. FTB received information through its Integrated Non-Filer Compliance Program that appellants received income sufficient to require a return.
3. On April 23, 2019, FTB issued a Demand for Tax Return (Demand) requiring appellants to file a return or otherwise respond by May 29, 2019. FTB did not receive a response to the Demand.
4. On February 27, 2020, FTB issued a Notice of Proposed Assessment (NPA) to appellants for tax of \$1,686, plus a late filing penalty of \$421.50, a penalty for failure to

- file upon notice and demand (demand penalty) of \$421.50, a filing enforcement fee of \$93, and applicable interest. Appellants did not protest the NPA, and it became final.
5. On October 10, 2022, appellants filed an untimely California resident income tax return for the 2017 tax year reporting tax of \$1,180, payments in the form of withholding credits of \$79,920, and an overpayment of \$78,740.
  6. FTB accepted appellants' return as filed. After applying a portion of the overpayment to the penalties and interest,<sup>1</sup> FTB denied appellants' claim for refund in the amount of \$78,129 based on the expiration of the statute of limitations.
  7. This timely appeal followed.

### DISCUSSION

The statute of limitations provides, in relevant part, that no credit or refund will 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 under an extension; (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).) Tax returns for calendar year taxpayers are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) A return filed before the due date for that return, is considered filed on the due date. (R&TC, §§ 19002(d)(1), 19066(b).) 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.)

R&TC section 19322.1, provides for an informal claim for refund, allowing taxpayers to toll the statute of limitations where a claim for refund is made prior to payment of the tax. An informal claim must be otherwise valid under R&TC section 19322, which means that the claim must: (1) be in writing; (2) bear the signature of each taxpayer or the taxpayer's authorized representative; and (3) state the specific grounds on which the claim is founded. An informal claim is perfected and deemed filed on the date that the full payment of tax is made. (R&TC § 19322.1(a).) However, no credit or refund may be made or allowed for any payment made more than seven years before the date that full payment of the tax is made. (*Ibid.*)

For the 2017 tax year, appellants failed to file a return by the due date of April 15, 2018, or within the automatic extension period. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later, on April 15, 2022. (R&TC, § 19306(a).) Appellants filed their claim for refund on October 10, 2022.

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<sup>1</sup> FTB reduced the demand penalty to \$295, and abated the late filing penalty, the filing enforcement fee, and applicable interest.

Thus, under R&TC section 19306, the four-year statute of limitations expired prior to appellants filing the claim for refund.

The alternative one-year statute of limitations applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Here, appellants made payments in the form of withholding credits, which are deemed paid as of the original due date of the return, April 15, 2018. (See R&TC, § 19002(c)(1).) Thus, appellants' payments were made more than one year before the claim for refund was filed on August 15, 2022. As such, appellants' claim for refund is barred under the one-year statute of limitations.

On appeal, appellants argue that they are entitled to a refund. First, appellants assert that the statute of limitations expired on October 15, 2022, and that the claim for refund (filed on October 10, 2022) was timely. Appellants also argue they filed a timely informal claim for refund, which was later perfected pursuant to R&TC section 19322.1. Next, appellants argue that the refund should be granted because FTB failed to apply withholding credits from the sale of real estate. Finally, appellants assert that the claim for refund should be granted due to personal circumstances that occurred during the statute of limitations period.

As discussed above, when no return is filed, the statute of limitations expires four years from the date the return was due, determined *without regard to any extension of time to file*. (R&TC, § 19306(a).) As such, the statute of limitations began to run on the *original due date* of April 15, 2018, and expired four years later, on April 15, 2022.

With respect to the alleged informal claim for refund, OTA notes that under R&TC section 19322.1, a taxpayer may file a claim for refund for the purpose of tolling the statute of limitations prior to making complete payment of a tax liability. (R&TC, § 19322.1.) That is not the circumstance in this case. Instead, appellants' withholding credits, which satisfied their liability, are deemed paid as of April 15, 2018, well before appellants filed their claim for refund and before the statute of limitations expired. As a result, the protection afforded to a taxpayer under R&TC section 19322.1 (i.e., the ability to file a claim for refund before making payment) is not applicable in this case because appellants paid their liability prior to the statute of limitations' expiration.<sup>2</sup> Moreover, R&TC section 19322.1 does not allow an informal claim for refund to be filed after the statute of limitations expires, as occurred in this case. Instead, it allows the taxpayer to file a claim for refund, without paying an assessed or asserted liability, within the

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<sup>2</sup> OTA notes that on November 2, 2022, FTB issued an annual notice reflecting a balance due. However, the claim for refund denial issued on November 9, 2022 (within one week of the annual notice) makes clear that appellants did not have a balance due.

statute of limitations, which may be perfected after filing via payment of an assessed or asserted liability. (R&TC, § 19322.1).

Finally, appellants make reasonable cause type arguments based on personal hardships and a claim that FTB had notice of an overpayment via real estate withholding credits. In support, appellants also provide a Form 593-C, Real Estate Withholding Certificate, which purports to show withholding of \$79,920. However, the language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Other than a narrow exception not relevant here,<sup>3</sup> a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh results from fixed deadlines are redeemed by the administrative clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Ibid.*) Thus, even if appellants timely filed a Form 593-C, they are not precluded from the requirement to file a claim for refund within the statute of limitations. Moreover, FTB has no duty to discover overpayments made by the taxpayers or to inform the taxpayers of the time within which a claim for refund must be filed. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844; *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.)

As such, appellants' claim for refund is barred by the statute of limitations.

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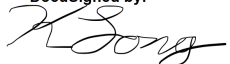
<sup>3</sup> R&TC section 19316 provides a narrow exception for suspending the statute of limitations when a taxpayer is deemed "financially disabled." A financially disabled taxpayer is unable to manage personal financial affairs by reason of medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1).)

HOLDING


Appellants' claim for refund for the 2017 tax year is barred by the statute of limitations.

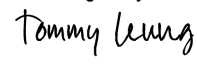
DISPOSITION

FTB's denial of appellants' claim for refund for the 2017 tax year is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
  
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Tommy Leung  
Administrative Law Judge

Date Issued: 2/12/2025