

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) | OTA Case No. 240817004 |
| R. POLITO AND |) | |
| J. POLITO |) | |
| |) | |
| |) | |

OPINION

Representing the Parties:

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| For Appellants: | Richard W. Harpe, CPA |
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| For Respondent: | John Ly, Graduate Legal Assistant |
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E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Polito and J. Polito (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$4,388 for the 2019 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. On February 6, 2024, FTB sent appellant R. Polito a notice to inform him that FTB received information that he received non-wage withholding credits for the 2019 tax year but FTB had no California income tax return on file for him. The notice provided a summary of the statute of limitations and advised appellants that FTB may not be able to allow a refund or a credit if appellants did not respond in a timely manner.
2. On May 31, 2024, appellants filed a California Nonresident or Part-Year Resident Income Tax Return reporting total tax of \$2,253, withholding of \$6,641, and an overpayment of \$4,388, which appellants requested be refunded.

3. FTB accepted the return as a claim for refund of \$4,388 but denied the claim due to the expiration of the statute of limitations.
4. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides 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 last date prescribed 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. For purposes of R&TC section 19306, amounts withheld are deemed paid on the original return due date. (R&TC, § 19002(c)(1).) 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.)

Appellants' untimely 2019 California tax return, which FTB treated as a claim for refund, was filed on May 31, 2024. The first four-year statute of limitations period does not apply here as appellants did not timely file the 2019 tax return by the extended due date. The second four-year statute of limitations period to file a claim for refund expired on April 15, 2024, four years after the original return due date of April 15, 2020. The one-year statute of limitations expired on April 15, 2021, because withholding credits are deemed to be paid on the original return due date, in this case April 15, 2020. Therefore, appellants' claim for refund filed on May 31, 2024, is untimely under both the four-year and one-year statutes of limitations.

On appeal, appellants assert their claim for refund was filed within the four-year statute of limitations because their extended due date to file a 2019 tax return was October 15, 2020. Appellants assert that based on the extended due date of October 15, 2020, the four-year statute of limitations did not expire until October 15, 2024, and they filed their refund claim before that date, on May 31, 2024. However, since appellants did not file a timely return pursuant to an extension of time to file, the governing four-year statute of limitations is determined based on the last date prescribed for filing a return, without regard to any extension of time to file, which here is April 15, 2020. (R&TC, § 19306(a).) Therefore, appellants' statute of limitations expired on April 15, 2024, which is later than the one-year statute of limitations that expired on April 15, 2021. Since appellants filed their claim for refund on May 31, 2024, it is barred by the statute of limitations.

HOLDING

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

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

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Erica Parker
Hearing Officer

Date Issued: 1/14/2025