

- \$1,488, a late-filing penalty of \$372, and interest for a total proposed assessment of \$2,039.07, after applying the \$59,234 of withholding and the \$7,150 payment.
5. Appellant paid the total proposed assessment amount by check on May 11, 2020. Since appellant was required to make payments electronically, respondent imposed a \$20.41 mandatory electronic payment penalty (E-pay penalty).
 6. According to respondent's records, appellant's 2017 tax year account also shows a \$516.65 E-pay penalty that was imposed for the 2019 tax year, but because appellant had yet to file the 2019 tax return, and due to system limitations, respondent applied the penalty to the only open year – 2017. Respondent sent a notice of the E-pay penalty to appellant, dated August 19, 2020, with a payment due date of September 3, 2020.
 7. Respondent received appellant's \$538.22 payment on September 9, 2020, and applied the payment to the remaining balance due.¹
 8. Appellant filed the 2017 tax return on March 28, 2023. Appellant reported \$54,204 of total tax, \$59,235 of withholding credits, and an overpayment of \$5,031, which appellant requested to be refunded.
 9. Respondent accepted the return as filed, treating it as a claim for refund, abated the late-filing penalty, and processed the 2017 tax return. Appellant's 2017 tax year account reflects an overpayment of \$14,240.16.
 10. However, respondent determined appellant had filed the claim for refund after the statute of limitations had lapsed and denied the claim.
 11. Appellant then filed this timely appeal.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306, which provides, in pertinent 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 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, for purposes of R&TC section 19306, the withholding payments made by appellant during the 2017 tax year are deemed paid on the due date of the tax return, without regard to any extension of time for filing the return. (R&TC, § 19002(c).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

¹ It appears that this payment was applied to the \$516.65 and \$20.41 penalties.

Appellant untimely filed the 2017 tax return on March 28, 2023, and therefore appellant had four years from the due date for filing the 2017 tax return, or April 15, 2022, in which to timely file a claim for refund, or one year from the date of overpayment. (R&TC, § 19306(a).) Appellant's claim for refund was filed almost a year after the four-year statutory deadline for its filing had lapsed. Additionally, respondent received appellant's payment of \$7,150 on April 15, 2018, and the withholding payments made for the 2017 tax year were also deemed received on that date, as well. Accordingly, the one-year statutory period for filing a claim for refund for those payments lapsed on April 15, 2019. Similarly, appellant's other payments of \$2,039.07 and \$538.22 were received on May 11, 2020, and September 9, 2020, respectively. Therefore, the one-year statutory period for these payments lapsed on May 11, 2021, and September 9, 2021, respectively. Appellant's claim for refund was filed approximately one-and-a-half years after those statutory periods had lapsed.

Appellant contends that the statute of limitations was tolled by the Governor in response to the COVID-19 pandemic. OTA (Office of Tax Appeals) notes that the COVID-19 postponements do not apply to this appeal because those extended periods had expired before the statute of limitations expired for appellant. Those restrictions were signed into effect by the Governor on March 12, 2020. Respondent allowed a postponement to July 15, 2020, for claims that would normally expire between March 12, 2020, and July 15, 2020.² Respondent also allowed a postponement to May 17, 2021, for claims that would have expired on April 15, 2021.³ Here, the four-year statute of limitations expired on April 15, 2022, well after the postponement periods. The one-year statute of limitations for withholding expired on April 15, 2019, which is outside the postponement period. The one-year statute of limitations for the additional payments expired on May 11, 2021, and September 9, 2021, which are outside the postponement period, as well.

Appellant also requests OTA consider tolling the statute of limitations for the death of his mother in 2017, the loss of his job, and his relocation several times during 2020, and because he is current on all his (other) filings and that he does not recall "receiving any notices of a filing

² See FTB Notice 2020-02; see also <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-4-state-postpones-deadlines-for-filing-tax-protests-appeals-and-refund-claims-due-to-covid-19.html>.

³ See FTB News Release dated April 26, 2021, <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.

delinquency.”⁴ However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Estate of Gillespie, supra*, citing *United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) “The language of the statute of limitations is explicit and must be strictly construed.” (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) “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.” (*Appeal of Estate of Gillespie, supra*, quoting *United States v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, supra.*) Therefore, appellant’s claim for refund is untimely and OTA has no basis to toll the statute of limitations.

⁴ Although appellant argues he does not recall receiving any notices, appellant paid the \$2,039.07 provided in the NPA on May 11, 2020, not long after the date of the NPA, March 3, 2020. Appellant paid the \$538.22 on September 9, 2020, a few months after respondent had sent the notices for E-pay penalties - on May 28, 2020, and September 3, 2020. Thus, appellant’s payment activities indicate he did, in fact, receive the notices.

HOLDING

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

DISPOSITION

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

Signed by:

Veronica I. Long

32D46B0C49C949E...

Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:

Teresa Stanley

0CC6C6ACC6A44D

Teresa Stanley
Administrative Law Judge

Signed by:

Seth Elsom

C04CD432E3254FD...

Seth Elsom
Hearing Officer

Date Issued: 2/20/2025