

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

In the Matter of the Appeal of: )  
M. ABADAM AND ) OTA Case No. 240516151  
J. ABADAM (DEC'D) )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: M. Abadam

For Respondent: Ganeet Atwaal, Legal Analyst

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Abadam and J. Abadam (Dec'd) (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$34,971.54 for the 2011 tax year.

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

**FACTUAL FINDINGS**

1. FTB issued a Request for Tax Return (Request) to appellants on August 13, 2013, when no return had been filed for the 2011 tax year.
2. Appellants did not respond to the Request and FTB issued a Notice of Proposed Assessment (NPA) on October 14, 2013.
3. Appellants did not respond to the NPA and it became final on December 13, 2013.
4. FTB initiated collection activity and imposed a collection cost recovery fee and county lien fee. FTB received payments on February 15, 2015, through February 15, 2024, totaling \$39,059.57.

5. Appellants filed their 2011 California Resident Income Tax Return (return) on February 29, 2024. FTB processed the return and determined an overpayment of \$38,845.57.
6. FTB credited six payments, totaling \$3,899.30 to appellants' open tax years. These payments consist of: the transfer on April 20, 2023 of \$680.47 from the 2022 tax year; and payments of \$759.58, \$372.49, \$624.03, \$752.82, and \$684.64 received respectively, on October 13, 2023, November 13, 2023, December 15, 2023, January 12, 2024, and February 15, 2024; plus \$25.27 of allowed interest.
7. FTB issued a Statute of Limitations Notice denying appellants' claim for refund for the remaining overpayment.
8. Appellants filed this timely appeal.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs, tit. 18, § 30219(a); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent a statutory exception, a taxpayer's untimely filing of a claim for any reason bars a refund.<sup>1</sup> (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, while fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

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<sup>1</sup> Though not applicable here, financial disability due to medically determined physical or mental impairment of the taxpayer is an example of an exception that may suspended the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie, supra.*)

Appellants' 2011 tax return, which was untimely filed on February 29, 2024, is treated as appellants' claim for refund. The original due date for filing appellants' 2011 return was April 15, 2012. (R&TC, § 18566.) The applicable four-year statute of limitations period for appellants' 2011 refund claim expired on April 15, 2016. Appellants' claim for refund was filed seven years after this date, and is therefore barred under the four-year statute of limitations period.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Appellants filed their claim for refund on February 29, 2024, and any payments transferred or received within one year of this date (February 28, 2023, or thereafter) must be credited to appellants. FTB credited six payments that were made during this period to appellants' open tax years;<sup>2</sup> however, all other payments were received more than one year prior to the date the claim for refund was filed. Therefore, the remaining overpayment is barred by the one-year statute of limitations.

Appellants do not explain why they filed the 2011 California tax return outside the statutes of limitation set forth in R&TC section 19306(a). OTA can only grant relief where the law specifically allows. (*Appeal of Estate of Gillespie, supra.*) Additionally, 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., supra.*) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm, supra.*) Since appellants' claim for refund is barred by the statute of limitations and appellants have not provided any legal basis for relief, OTA cannot allow the claim for refund.

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<sup>2</sup> These payments include: the transfer on April 20, 2023 of \$680.47 from the 2022 tax year and payments of \$759.58, \$372.49, \$624.03, \$752.82, and \$684.64 received respectively, on October 13, 2023, November 13, 2023, December 15, 2023, January 12, 2024, and February 15, 2024.

HOLDING

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

DISPOSITION

FTB's action is sustained.

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*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Cheryl L. Akin*  
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Cheryl L. Akin  
Administrative Law Judge

Signed by:  
*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

Date Issued: 2/28/2025