

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240415965
R. GNEWUCH AND)	
D. GNEWUCH)	
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OPINION

Representing the Parties:

For Appellants:	R. Gnewuch and D. Gnewuch
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For Respondent:	Rosemary Villasenor, Senior Legal Analyst
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For Office of Tax Appeals:	Amber Poon, Attorney
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S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Gnewuch and D. Gnewuch (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$10,000¹ for the 2018 tax year.

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' refund claim for the 2018 tax year is timely.

¹ The original amount in dispute was \$14,000. However, on appeal, respondent concedes that of the \$14,000 at issue, it will refund \$4,000.

FACTUAL FINDINGS

1. Appellants did not timely file a 2018 California income tax return (Return).
2. After requesting but not receiving a Return from appellants, respondent issued a proposed assessment for tax and various other charges based on an estimate of appellants' income.
3. Appellants entered a provisional payment plan in which monthly payments of \$2,000 were credited to appellants' 2018 tax account from June 2, 2022, through February 2, 2023. An additional payment of \$1,000 was credited on October 15, 2023. Appellants made payments totaling \$19,000.
4. On October 9, 2023, appellants filed their Return, requesting a \$19,000 refund.
5. Respondent accepted the Return as filed and refunded \$5,000 to appellants. Respondent did not credit or refund appellants' remaining overpayment because respondent determined that the Return was filed outside the limitation period for making a refund claim.
6. This timely appeal followed.²
7. On appeal, respondent agrees to refund an additional \$4,000 to appellants because respondent determined that appellants' claim for refund was timely with respect to these payments under the one-year statute of limitations period.

DISCUSSION

The law generally requires that taxpayers file their refund claims by the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) In other words, for appellants' refund claim to be considered timely under the applicable four-year limitation period, it must have been filed within four years from the due date of the Return without regard to any extensions (i.e., April 15, 2023). (*Ibid.*) Since appellants' October 9, 2023, refund claim was filed after the April 15, 2023, deadline, ordinarily it would be untimely under the applicable four-year limitation period.

² On appeal, one of appellants' contentions is that respondent's agents assured that excess payments would be refunded but failed to mention the statute of limitations. Please note that respondent has no duty to discover, or provide notice of, a taxpayer's overpayment of income tax. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Furthermore, respondent has no obligation to inform a taxpayer of the time within which a claim must be filed. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Ignorance of the law does not excuse the delinquent filing of claims for refund. (*Appeal of Braeunig* (70-SBE-004) 1970 WL 2439.)

However, due to the 2023 California winter storms, the IRS granted affected taxpayers until November 16, 2023, to perform time-sensitive actions described in Treasury Regulation section 301.7508A-1(c)(1), which expressly includes filing a claim for credit or refund of any tax.³ (Treas. Reg. § 301.7508A-1(c)(1)(v).) The postponement relates to certain deadlines falling on or after January 8, 2023, through November 16, 2023, and applies to “individuals and households affected by severe winter storms, flooding, and mudslides that reside or have a business” in certain California counties.⁴ In a news release, respondent stated that it was conforming with this IRS disaster relief, which postponed the four-year statute of limitations to timely file a claim for refund to November 16, 2023.⁵ Respondent also stated that it “generally conforms to the IRS postponement periods for presidentially declared disasters.”⁶ Since the four-year limitation period for appellants to file a 2018 claim for refund expired on April 15, 2023, which was during the 2023 winter storm postponement period, the deadline to file was postponed to November 16, 2023. Therefore, appellants’ 2018 claim for refund filed on October 9, 2023, was timely.

³ IRS issued Notices CA-2023-01 and CA-2023-02, initially granting affected taxpayers until May 15, 2023, to perform certain actions described above. This May 15, 2023, deadline was later extended to October 16, 2023, and subsequently to November 16, 2023. See IR-2023-189, Oct. 16, 2023, available at: www.irs.gov/newsroom/for-california-storm-victims-irs-postpones-tax-filing-and-tax-payment-deadline-to-nov-16.

⁴ Counties qualifying for relief include Orange County, where appellants resided according to their 2018 Return. See IRS announces tax relief for victims of severe winter storms, flooding, and mudslides in California | Internal Revenue Service.

⁵ See www.ftb.ca.gov/about-ftb/newsroom/news-releases/10-16-extended-tax-deadline.html; see also www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html.

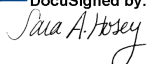
⁶ Respondent’s authority to grant state of emergency postponements for tax-related acts is found in R&TC section 18572(b), which adopts Internal Revenue Code (IRC) section 7508A. (See also *Appeal of Bannon*, 2023-OTA-096P.) When applying the IRC for purposes of California personal income tax, IRS Treasury Regulations shall be applicable to the extent that they do not conflict with California personal income tax code sections or regulations. (R&TC, § 17024.5; *Ibid.*)

HOLDING

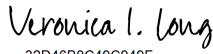
Appellants' refund claim for the 2018 tax year is timely pursuant to the California severe winter storm postponement.

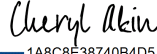
DISPOSITION

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

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

DocuSigned by:

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 3/12/2025