

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
S. BRAHY-VIGUERS) OTA Case No. 240616563
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OPINION

Representing the Parties:

For Appellant: S. Brahy-Viguers

For Respondent: Ganeet Atwaal, Legal Analyst

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Brahy-Viguers (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,034.28 for the 2018 tax year.¹

Appellant 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 appellant’s claim for refund for the 2018 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On May 11, 2020, appellant late filed his 2018 California income tax return. Appellant reported total tax of \$1,657 and self-assessed an underpayment of estimated tax (estimated tax) penalty of \$42, for a reported balance due of \$1,699. Appellant did not remit payment with the return.

¹ Appellant additionally requests to appeal the 2019 tax year; however, appellant has not filed a claim for refund for that tax year. In general, the Office of Tax Appeals (OTA) does not have jurisdiction to hear or decide an appeal of a claim for refund unless either (i) FTB has issued a notice denying the refund claim, or (ii) FTB fails to act on a perfected claim for refund within six months. (Cal. Code Regs., tit. 18, § 30103(a)(3)-(4).) Thus, OTA lacks jurisdiction to hear an appeal for the 2019 tax year at this time.

2. On July 1, 2020, FTB issued appellant a Notice of Tax Return Change – Revised Balance, advising him of the amount due and imposed a late filing penalty of \$414.25. Appellant failed to pay the balance, and FTB initiated collection action. FTB received payments pursuant to collection action from October 8, 2021, through July 14, 2022, totaling \$2,343.54.
3. On May 7, 2024, appellant filed a 2018 amended California income tax return reporting reduced tax of \$141. FTB processed the amended return and reduced the late filing penalty to \$135 and interest to \$33.26, resulting in an overpayment of \$2,034.28 on appellant's 2018 account. FTB treated the amended return as a claim for refund, which it denied.
4. Appellant filed this timely appeal.

DISCUSSION

Appellant does not dispute that his claim for refund was filed after the expiration of the statute of limitations but contends that the payments received pursuant to FTB's collection action should be refunded to him because the amounts were not actually owed.²

The language of R&TC section 19306 is explicit and must be strictly construed, and the taxpayer bears the burden of establishing entitlement to a claim for refund. (*Appeal of Cornbleth*, 2019-OTA-408P; *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. (*Appeal of Benemi Partners, supra.*) This is true even when it is later shown that the tax was not properly owed. (*Ibid.*)

FTB initiated collection action based on the amount that was due and payable by appellant under his originally filed 2018 California income tax return. The overpayment arose from appellant's filing of an amended return, which was filed more than a year after FTB initiated collection action and received payment for the amounts due on appellant's account at that time. Thus, while it is clear that the amount collected ultimately exceeded the amount due after appellant filed an amended return, the statute of limitations bars an untimely claim for refund. (See *Appeal of Benemi Partners, supra.*)

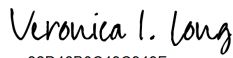
² R&TC section 19306(a) provides that no credit or refund may be allowed or made if a claim for refund is not filed by the taxpayer within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date of the return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment.

HOLDING

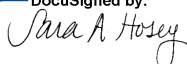
Appellant's claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

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

Signed by:

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Veronica I. Long
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

Date Issued: 3/12/2025