

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of:	)	OTA Case Nos. 231214945; 240415873;
<b>V. HILL</b>	)	240616445
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**OPINION**

Representing the Parties:

For Appellant: V. Hill

For Respondent: Noel Garcia-Rosenblum, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Hill (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$1,089, \$1,658.92,<sup>1</sup> \$2,675, and \$4,349 for the 2015, 2016, 2017, and 2018 tax years, respectively.

Appellant 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.)

Appellant 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 the statute of limitations bars appellant's claims for refund for the 2015, 2016, 2017, and 2018 tax years.

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<sup>1</sup> FTB's claim denial letter indicates an overpayment amount of \$1,658.92. However, FTB asserts that the correct amount at appeal is \$1,657.01 due to a "previous debit write-off" of \$1.91.

FACTUAL FINDINGS2015

1. Appellant timely filed a 2015 California Resident Income Tax Return (Form 540) reporting total tax of \$1,089 and withholdings of \$3,662, resulting in an overpayment of \$2,573. On May 2, 2016, FTB issued a refund of \$2,573.
2. On September 14, 2023, appellant filed a 2015 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) amending total tax to \$0, resulting in an overpayment of \$1,089. FTB accepted the amended 2015 return as a claim for refund.
3. On December 5, 2023, FTB denied the claim for refund for the 2015 tax year.

2016

4. Appellant timely filed a 2016 Form 540 reporting total tax of \$1,227 and withholdings of \$4,204, resulting in an overpayment of \$2,977. On May 1, 2017, FTB issued a refund of \$2,977.
5. Subsequently, FTB obtained information from the Internal Revenue Service indicating that appellant underreported income on the 2016 Form 540. FTB made adjustments to the 2016 Form 540, and on July 20, 2020, issued a Notice of Proposed Assessment for additional tax of \$373, plus accrued interest.<sup>2</sup> Appellant remitted \$430.01, which FTB received on September 18, 2020, satisfying the outstanding balance for 2016.
6. On September 15, 2023, appellant filed a 2016 Form 540NR amending total tax to \$0, resulting in an overpayment of \$1,227. FTB accepted the amended 2016 return as a claim for refund of \$1,657.01 (\$1,227 + \$430.01).
7. On May 13, 2024, FTB denied the claim for refund for the 2016 tax year.

2017

8. Appellant timely filed a 2017 Form 540 reporting total tax of \$2,675 and withholdings of \$6,165, resulting in an overpayment of \$3,490. On April 2, 2018, FTB issued a refund of \$3,490.
9. On September 15, 2023, appellant filed a 2017 Form 540NR amending total tax to \$0, resulting in an overpayment of \$2,675. FTB accepted the amended 2017 return as a claim for refund of \$2,675.
10. On October 30, 2023, FTB denied the claim for refund for the 2017 tax year.

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<sup>2</sup> Appellant does not dispute FTB's adjustments to the 2016 Form 540.

2018

11. Appellant timely filed a 2018 Form 540 reporting total tax of \$14,193 and withholdings of \$5,313, resulting in tax due of \$8,880. Appellant remitted payment of \$8,880 on April 15, 2019.
12. On January 15, 2024, appellant filed a 2018 Form 540NR amending total tax to \$9,755 and withholdings to \$5,307, resulting in tax due of \$4,448. FTB made adjustments to appellant's 2018 Form 540NR and accepted the adjusted return as a claim for refund of \$4,349.<sup>3</sup>
13. On April 2, 2024, FTB denied the claim for refund for the 2018 tax year.
14. Appellant timely filed these appeals, which were consolidated.

DISCUSSION

R&TC section 19306(a) provides, in relevant 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. A taxpayer has the burden of proving entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant does not dispute that the claims for refund for 2015, 2016, 2017, and 2018 were all filed after the expiration of the respective statute of limitations. The record also shows that the claims for refund for 2015, 2016, 2017, and 2018, were all filed after the applicable four-year and one-year statute of limitations periods.<sup>4</sup>

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<sup>3</sup> Appellant does not dispute FTB's adjustments to the 2018 Form 540NR.

<sup>4</sup> Withholdings credits are deemed paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1).)

Instead, appellant contends that she hired a California paid tax preparer to file amended returns for 2015, 2016, 2017, and 2018,<sup>5</sup> but that the tax preparer failed to do so due to a mistake or negligence.<sup>6</sup> Appellant asserts that she endured hardship due to her mother's cancer diagnosis in January 2016, and later passing in May 2018. Appellant also states that she is an active-duty military member and that she was stationed outside of the United States for the 2015, 2016, 2019, and 2020 tax years.<sup>7</sup>

Appellant's ability to timely file the claims for refund may have been affected by her tax preparer's mistake or negligence, and hardship related to her mother. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (See *Appeal of Benemi Partners, L.P.*, *supra*.)

A taxpayer may qualify for special provisions allowing for extended deadlines to file a claim for refund if a taxpayer serving in the Armed Forces of the United States was in a combat zone,<sup>8</sup> or was deployed outside the United States away from the taxpayer's permanent duty station while participating in a contingency operation.<sup>9</sup> (R&TC, § 18571(a); Internal Revenue Code (IRC), § 7508(a); see *Appeal of Khan*, 2020-OTA-126P.) Generally, the deadlines for performing certain actions applicable to a taxpayer's taxes are extended for the period of the taxpayer's service in the combat zone, plus 180 days after the taxpayer's last day in the combat zone. (R&TC, § 18571(a); IRC, § 7508(a); see *Appeal of Khan*, *supra*.)

However, during the relevant time frames, appellant served in Portugal, Germany, or within the United States, which are not areas considered combat zones. Moreover, appellant does not allege, and the record does not show, that appellant was participating in a contingency operation while stationed outside of the United States. Therefore, appellant does not qualify for any special provisions extending the deadline to timely file a claim for refund.

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<sup>5</sup> Because appellant reported overpayments of tax for each tax year at issue, the amended returns are considered claims for refund.

<sup>6</sup> The record shows that appellant contacted the tax preparer as early as September 13, 2021.

<sup>7</sup> The record shows that appellant served in Portugal from July 2015, through June 2016, and in Germany from June 2019, through June 2021.

<sup>8</sup> The term "combat zone" means any area which the President of The United States by Executive Order designates as an area in which Armed Forces of the United States are or have engaged in combat. (IRC, § 112(c)(2).)

<sup>9</sup> The term "contingency operation" means a military operation that: (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may be involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (B) results in the call or order to, or retention on, active duty of members of the uniformed services. (10 U.S.C. § 101(a)(13); see IRC, § 7508(a).)


Based on the foregoing, OTA finds there is no basis to suspend the statute of limitations for filing a claim for refund for the 2015, 2016, 2017, or 2018 tax years.

HOLDING

Appellant's claims for refund for the 2015, 2016, 2017, and 2018 tax years are barred by the statute of limitations.

DISPOSITION

OTA sustains FTB's actions in denying the claims for refund for the 2015, 2016, 2017, and 2018 tax years.

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Steven Kim  
Administrative Law Judge

Date Issued: 2/28/2025