

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

In the Matter of the Appeal of: )  
**C. SHERMAN** ) OTA Case No. 240716865  
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**OPINION**

Representing the Parties:

For Appellant: C. Sherman

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Oliver Pfof, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Sherman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$21,876.77 for the 2019 tax year.

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 appellant’s claim for refund for the 2019 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. FTB received information indicating appellant realized sufficient income in the 2019 tax year to require the filing of a California state income tax return. FTB issued a notice requesting appellant file a return, provide evidence a return had already been filed, or explain why a return was not required.
2. FTB did not receive a response to its request, and it issued a Notice of Proposed Assessment (NPA) which proposed to assess tax based on an estimate of appellant’s income.
3. FTB did not receive a protest of the NPA which went final, that is, due and payable.

4. FTB pursued collection action and received 10 payments between November 22, 2022, and January 31, 2023. FTB also received one payment of \$574.76 on June 6, 2023.
5. On May 15, 2024, FTB received a 2019 California resident income tax return (tax return) from appellant. The tax return reported California income tax withheld of \$19,360.<sup>1</sup>
6. FTB treated the tax return as a claim for refund of \$21,876.77, which it denied in a claim denial notice.<sup>2</sup>
7. Appellant timely filed this appeal.

### DISCUSSION

Taxpayers have the burden of proof in showing that a claim for refund is timely and that a refund should be granted. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Absent a statutory exception, the untimely filing of a claim for any reason bars a refund. (*Ibid.*)

Appellant does not dispute the tax return (treated as appellant's claim for refund) received by FTB on May 15, 2024, is barred by the statute of limitations.<sup>3</sup> Rather, appellant contends he originally mailed a California state income tax return to FTB on May 5, 2022, before the statute of limitations expired. Appellant contends he learned FTB did not have a record of receiving this return and he mailed it again to FTB before the statute of limitations expired. In support, appellant provides receipts from the United States Postal Service (USPS) indicating appellant paid to have an item mailed on May 5, 2022, November 22, 2022, July 7, 2023, and March 15, 2024. Appellant argues these receipts prove he mailed a return to FTB before the statute of limitations expired.

A taxpayer attempting to prove that a paper return was timely mailed must provide evidence, such as a registered or certified mail receipt, that shows the return was timely mailed to FTB. (Gov. Code, § 11003; R&TC, § 21027; *Appeal of Fisher*, 2022-OTA-337P.) Here, the USPS receipts are not registered or certified mail receipts. The receipts show the cost of the mailing service and the date of the transaction, but do not show the addressee, the address the

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<sup>1</sup> Income tax withholding is deemed paid on the statutory due date of the return, which here is April 15, 2020. (R&TC, §§ 19002(c)(1), 18566.)

<sup>2</sup> FTB determined that appellant's claim for refund was timely (pursuant to the one-year statute of limitations) as to appellant's June 6, 2023, payment of \$574.76. FTB refunded this amount, including interest, by transferring the refund to an unrelated tax year.

<sup>3</sup> The statute of limitations to file a claim for refund is provided 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.

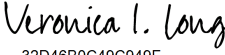
documents were mailed to, or indicate whether the mail was delivered to/received by the addressee. Because the receipts lack this essential information, there is insufficient evidence to prove the returns were mailed to FTB at the correct address or that FTB received appellant's tax return and claim for refund before May 15, 2024. Therefore, appellant has not satisfied his burden of proof in showing that the claim for refund was timely.


HOLDING

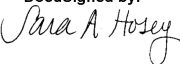
Appellant's claim for refund for the 2019 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained.

Signed by:  
  
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Veronica I. Long  
Administrative Law Judge

We concur:  
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Cheryl L. Akin  
Administrative Law Judge

DocuSigned by:  
  
6D3FE4A0CA514E7...  
Sara A. Hosey  
Administrative Law Judge

Date Issued: 4/10/2025