

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240716792
C. GORCZYCA)
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OPINION

Representing the Parties:

For Appellant: C. Gorczyca

For Respondent: Caitlin S. Russo, Senior Legal Analyst

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Gorczyca (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,702 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 refund claim for the 2019 tax year was timely.

FACTUAL FINDINGS

1. On December 14, 2020, appellant called FTB to inquire as to appellant’s account balance for the 2016 tax year.
2. Appellant’s first phone conversation with FTB involving the 2019 tax year occurred on May 13, 2024, in which FTB informed appellant that it had not received appellant’s 2019 California income tax return (Return).
3. On May 15, 2024, FTB received the Return requesting a refund of appellant’s \$3,702 tax withholding (the amount in excess of the reported tax due), which was credited on April 15, 2020.

4. FTB processed the Return as filed but did not refund or credit appellant's overpayment because FTB determined the Return was filed outside the limitation period for making a refund claim.
5. FTB issued a claim denial notice from which appellant timely appeals.

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).) Taxpayers bear the burden of proving, by a preponderance of evidence, that a refund claim was timely filed. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant does not dispute that the Return was received by FTB after the statute of limitations had expired. Rather, appellant contends that the refund claim was timely because the Return was originally mailed to FTB sometime in June 2020. Appellant alleges that on December 16, 2020, appellant called FTB to inquire as to the status of the Return. Appellant also asks that the claim be granted due to financial hardship.

Generally, a document filed with FTB is considered filed on the date the document is received by FTB. (See *U.S. v. Lombardo* (1916) 241 U.S. 73, 76-77 [documents filed with the government are considered filed when delivered and received by the proper agency or official].) However, there is an exception for documents which are mailed to FTB using the United States Postal Service (USPS) or a bona fide commercial delivery service. Such documents, when properly addressed with postage prepaid, are deemed filed on the date shown by the cancellation mark stamped on the envelope containing the document, or, alternatively, the date of mailing, provided there is sufficient proof to establish that the document was mailed at an earlier time. (Gov. Code, § 11003.) Thus, regardless of when FTB received the document, a showing by the taxpayer that the Return was mailed to FTB in June 2020 under the above conditions means that the Return was filed within the four-year statute of limitations for making a refund claim.

Appellant, however, did not provide any proof of mailing, such as a USPS certified or registered mailing receipt. As to appellant's argument that a phone call was made in December 2020, regarding the status of the Return, the phone conversation in the record between FTB and appellant shows no mention of the Return, only a discussion of the 2016 tax year details. Appellant also does not explain why appellant waited four more years to follow up

with FTB on a refund claim allegedly mailed in June 2020, making this allegation, which was raised shortly after FTB issued the claim denial notice, less credible.

Regardless, because the mailing date of the Return cannot be reliably ascertained from the available evidence, Government Code section 11003 does not apply. The Return was therefore filed on the date received by FTB, meaning appellant’s refund claim is untimely. While OTA is sympathetic to the situation described by appellant, OTA lacks the authority to grant an untimely refund claim for equitable reasons. (See *Appeal of Estate of Gillespie, supra.*)

Although the result of fixed deadlines may appear harsh, the occasional unfairness is necessary to allow for a more workable tax system and is redeemed by the clarity imparted. (*Ibid.*)

HOLDING

Appellant’s refund claim for the 2019 tax year was not timely.

DISPOSITION

FTB’s action is sustained.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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

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

Date Issued: 3/11/2025