**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of:<br><br>**J. DI IORIO AND**<br>**M. DI IORIO** | OTA Case No. 240817170 |

## OPINION

Representing the Parties:

For Appellants: J. Di Iorio
M. Di Iorio

For Respondent: Ariana Macedo, Graduate Legal Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Di Iorio and M. Di Iorio (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of $6,102.19 for the 2016 tax year.

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

## ISSUE

Whether appellants' claim for refund is barred by the statute of limitations.

## FACTUAL FINDINGS

1. Appellants did not file a timely California income tax return for the 2016 tax year.
2. On March 13, 2018, FTB mailed a Request for Tax Return (Request) to appellant J. Di Iorio for the 2016 tax year because FTB received information showing that he received sufficient income to prompt a filing requirement. FTB's request required appellant J. Di Iorio to file a 2016 return or explain why no return was required by April 18, 2018. FTB did not receive a response to the Request and FTB mailed a second Request to appellant J. Di Lorio requiring a response by May 16, 2018.[1]

[1] The first and second requests were mailed to different addresses. There is no evidence in the appeals file that either address was incorrect, and appellants have not asserted that the Requests were not received.

3. After appellant J. Di Iorio failed to respond to the second Request, FTB issued him a Notice of Proposed Assessment (NPA) dated June 11, 2018, that estimated his taxable income. After applying withholding credits, the NPA proposed a tax liability of $3,032 and imposed a late filing penalty of $758, plus applicable interest. Appellants did not respond to the NPA and it became final.
4. FTB subsequently began collection action and received $4,632.15 in payments during the period November 1, 2021, to December 15, 2021.
5. On July 15, 2024, appellants filed a joint California Resident Income Tax Return for the 2016 tax year. After applying withholding credits of $6,962, appellants claimed a refund of $1,471.[2] FTB accepted the return as filed but denied appellants' claim for refund based on the expiration of the statute of limitations.
6. This timely appeal followed.

## DISCUSSION

In an action for a refund, the taxpayers bear the burden of proof in showing entitlement to a refund and that the claim was timely. (*Appeal of Gillespie*, 2018-OTA-052P.) No credit or refund may be allowed unless a claim for refund is filed within the later of four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or one year from the date of overpayment. (R&TC, § 19306(a).)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) 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 to file a claim for refund within the statute of limitations period, for any reason, bars the taxpayer from later claiming a refund. (*Ibid.*) Furthermore, FTB does not have a duty to inform a taxpayer of an overpayment or the statute of limitations. (See *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.)

Here, appellants' filed an untimely 2016 return on July 15, 2024. Because appellants did not file a timely return, the four-year statute of limitations began to run on the return's original

[2] FTB determined that there was a $6,102.19 overpayment because the 2016 tax year account includes $6,962 of withholdings, $4,632.15 of payments, a $5,491 tax liability, and a $0.96 debit ($6,962 + $4,632.15 - $5,491 - $0.96 = $6,102.19).

due date (April 15, 2017) and expired four years later on May 17, 2021.[3] Appellants filed their claim for refund after the applicable four-year statutory period expired. Therefore, FTB is barred from refunding or crediting any overpayment for the 2016 tax year under that provision.

The alternative one-year statute of limitations period expired one year from the date of appellants' overpayments. For purposes of R&TC section 19306, withholding is treated as paid on the last day prescribed for filing the return. (R&TC, § 19002(c).) Here, appellants' payments include withholding credits, which are treated as paid on April 15, 2017. FTB also received payments during the period November 1, 2021, to December 15, 2021. In each case, appellants' payments were made more than one year before appellants filed their claim for refund, on July 15, 2024. Accordingly, appellants' claim for refund is barred by the one-year statute of limitations.

Appellants do not dispute that they did not timely file their claim for refund within the statute of limitations. Instead, appellants argue that no one informed them that the statute of limitations for claiming a refund was about to expire. However, it is well settled that the statute of limitations for refund claims cannot be suspended based on reasonable cause or equitable basis arguments. (*Appeal of Benemi Partners, L.P.*, *supra*.) Additionally, FTB does not have a duty to inform appellants of the time when their refund claim must be filed. (See *Appeal of Matthiessen*, *supra*.)

Therefore, FTB properly denied appellants' claim for refund.

[3] For the 2016 tax year, FTB allowed an extension of time for individuals to file a claim for refund no later than May 17, 2021. (See R&TC, § 18572; FTB, *State Postpones Deadline for Claiming 2016 Tax Refunds to May 17, 2021*, news release (April 26, 2021) www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html.)

HOLDING

Appellants' claim for refund is barred by the statute of limitations.

DISPOSITION

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

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Keith T. Long
Administrative Law Judge

We concur:

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Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

Date Issued: 8/26/2025