

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240716672
J. SALEH	}	
	}	
	}	
	}	

OPINION

Representing the Parties:

For Appellant:	J. Saleh
----------------	----------

For Respondent:	Nikhita Pais, Graduate Legal Assistant
-----------------	--

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Saleh (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$3,263.73 for the 2016 tax year.

Appellant waived the right to an oral hearing and submitted the matter to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Is appellant's claim for refund of overpayments made more than one year prior to the date appellant filed the claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant was a California resident during the 2016 tax year.
2. On May 3, 2018, after appellant had not filed a California Resident Income Tax Return for the 2016 tax year, respondent sent appellant a Demand for Tax Return (Demand), which instructed appellant to respond by June 6, 2018, by filing a 2016 tax return, providing evidence that appellant had already filed a 2016 tax return, or providing information to show that appellant was not legally required to file a 2016 return. The Demand also informed appellant that a failure to file a valid return by the stated due date would result in the assessment of tax, penalties, interest, and a filing enforcement or cost recovery fee.

3. On July 2, 2018, after appellant did not reply to the Demand, respondent sent appellant a Notice of Proposed Assessment (NPA) of estimated tax (\$2,251), a late-filing penalty (\$562.75), a demand penalty (\$562.75), and applicable interest. The NPA states that the proposed assessment would become due and payable unless respondent received appellant's return or protest by August 31, 2018.
4. Respondent imposed a \$317 collection cost recovery fee.
5. On October 1, 2018, after appellant failed to file a return or protest the NPA, respondent sent appellant a Notice of State Income Tax Due, which itemized the account balance to include \$2,251 in tax, \$1,125.50 in penalties, an \$84 filing enforcement fee, and interest.
6. Respondent instituted collection action and, as a result, received payments at various times from December 5, 2022, to June 5, 2023, totaling \$4,019.26.
7. On May 13, 2024, appellant filed a 2016 return, which reported no tax due. Respondent accepted the late return and treated it as a claim for refund.
8. On June 18, 2024, respondent refunded \$779.41 to appellant.
9. On June 24, 2024, respondent informed appellant that it could not refund the remainder of the overpayment, \$3,263.73, because the claim for that amount was barred by the statute of limitations.
10. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed unless a claim for refund is filed within: (1) four years from the date the return was filed, if the return was filed within an extended filing period allowed by respondent; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Such fixed deadlines may appear harsh, particularly in cases such as this, where a taxpayer cannot obtain a refund of an admitted overpayment; but the law considers such harsh result to be an acceptable consequence of having an important obligation – and the consequences of failing to fulfill that obligation – clearly defined. (*Appeal of Khan*, 2020-OTA-126P.) The taxpayer has the burden of proving that the claim for refund was timely and that the taxpayer is entitled to the refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant argues that her 2016 return was first filed in 2019 and that respondent returned that return for appellant's signature. Appellant asserts that she signed and resubmitted

the return to respondent in 2020 and was unaware that the return had not been received by respondent until respondent began its collection efforts. Appellant requests that the remaining overpayment be refunded to her or, if that cannot be done, that the amount be credited to her account for other tax years.¹

Appellant has the burden of proving that the claim was timely and that she is entitled to the refund. Appellant has not proved she filed her 2016 return in 2019 or 2020. Consequently, OTA finds that appellant first filed the claim on May 13, 2024.

The extended due date for appellant's 2016 return was October 15, 2017. (R&TC, § 18567(a); Cal. Code Regs., tit. 18, § 18567(a).) Appellant did not file the return by that date, so the limitations period first described in R&TC section 19306(a) does not apply here. The due date for filing appellant's 2016 return, without regard to any extension of time to file, was April 15, 2017. (R&TC, § 18566.) Four years from that date was April 15, 2021, but respondent postponed the due date for claims pertaining to the 2016 tax year to May 17, 2021, due to the COVID-19 pandemic. Appellant did not file the claim by that postponed due date. Therefore, the limitations period that controls here is the one last described in R&TC section 19306(a): one year from the dates of the overpayments.

The evidence shows that respondent promptly refunded all payments made during the year prior to the date that appellant filed the claim.² Appellant does not argue otherwise. Consequently, OTA finds that appellant's claim for refund of amounts overpaid more than one year prior to the date appellant filed the claim is barred by the statute of limitations.

¹ This Opinion will not further discuss appellant's request for a credit in lieu of a refund since they are, for purposes of the statute of limitations, the same thing, meaning that if one is barred, the other is also barred.


² OTA calculates payments totaling only \$438.53 made within the applicable limitations period.

HOLDING

Appellant's claim for refund of overpayments made more than one year prior to the date appellant filed the claim is barred by the statute of limitations.

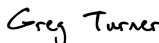
DISPOSITION

Respondent's action denying, in part, appellant's claim for refund is sustained.

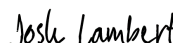
DocuSigned by:


Michael F. Geary
Administrative Law Judge

We concur:

Signed by:


Greg Turner
Administrative Law Judge

Signed by:


Josh Lambert
Administrative Law Judge

Date Issued: 9/16/2025