

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. DI VITA AND) OTA Case No. 240917517
P. DI VITA)
_____)

OPINION

Representing the Parties:

For Appellants: Christa J. Harper, E.A., Representative

For Respondent: Ariana Macedo, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Di Vita and P. Di Vita (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$28,793.08 for the 2019 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals 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 timely file a 2019 California income tax return.
2. On June 30, 2021, respondent sent appellant M. Di Vita a Demand for Tax Return (Demand), informing appellant M. Di Vita that respondent received information indicating that appellant M. Di Vita received income and may have a California filing requirement in the 2019 tax year, but had not filed a return. The Demand required appellant M. Di Vita to send a copy of a tax return if already filed, file a return if not filed, or complete and submit a questionnaire if appellant M. Di Vita did not have a filing requirement. Appellant M. Di Vita did not respond to the Demand.
3. On September 24, 2021, respondent sent appellant M. Di Vita a Notice of Proposed Assessment (NPA) for the 2019 taxable year, proposing to assess additional tax of

\$22,916, and imposing a late filing penalty of \$5,729, a demand penalty of \$5,729, and a filing enforcement fee of \$97, plus applicable interest, for a proposed assessment of \$35,790.39. Appellant M. Di Vita did not respond to the NPA and it became due and payable.

4. On May 14, 2022, appellants made a payment of \$36,748.68 for the 2019 tax year.
5. On August 27, 2024, appellants jointly filed a 2019 Form 540, California Resident Income Tax Return, reporting total tax of \$4,676, no payments, an estimated tax penalty of \$164, and a total amount due of \$4,840. Appellants remitted a \$4,840 payment with the return.
6. Respondent accepted appellants' 2019 return as filed, treated it as a claim for refund, and recalculated a late filing penalty of \$1,169, a demand penalty of \$1,169 and imposed a collection cost recovery fee of \$316, plus applicable interest. Respondent then applied appellants' May 14, 2022 payment against the balance of tax, penalties, fees and applicable interest, for an overpayment of \$28,793.08.¹
7. On September 16, 2024, respondent issued appellants a refund of \$4,840 for their August 27, 2024 payment.
8. Respondent then sent appellants a Statute of Limitations letter denying appellants' remaining claim for refund of \$28,793.08 due to the expiration of the statute of limitations.
9. This timely appeal followed.

2020 Tax Year²

10. On June 21, 2023, appellants made a payment of \$28,700.37 for the 2020 tax year. Respondent subsequently issued appellants a \$17,632.81 refund (for the 2020 tax year) and transferred a credit of \$7,179.47 to appellants' 2021 tax year. The remaining amount was applied to the tax, penalties, and interest due for the 2021 tax year.

¹ Respondent applied appellants' payments \$36,793.50 (May 14, 2022 payment of \$36,748.68 plus an undisclosed credit of \$44.82) against tax, penalties, fees and applicable interest of \$8,000.42 (tax of \$4,676, plus estimated tax penalty of \$164, plus late filing penalty of \$1,169, plus demand penalty of \$1,169, plus collection cost recovery fee of \$316, plus filing enforcement fee of \$97, plus interest of \$409.42), resulting in an overpayment of \$28,793.08 for the 2019 tax year.

² Appellants do not contest any items for the 2020 tax year and OTA discusses it only in relationship to arguments raised by appellants on appeal for the 2019 tax year.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent 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 due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)).

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) The language of the statute of limitations is explicit and must be strictly construed. (*Benemi, supra.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

For 2019, the extended filing deadline expired on October 15, 2020. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.) Appellants filed their 2019 return, treated by respondent as a claim for refund, on August 27, 2024, after the expiration of the extension period. Thus, the first limitations period does not apply. The original due date for filing the 2019 return was April 15, 2020,³ and the four-year statute of limitations expired four years later on April 15, 2024. (R&TC, §§ 18566, 19306(a).) Therefore, appellants' claim for refund is also untimely under the second limitations period. For the foregoing reasons, appellants' claim for refund is barred under the four-year statute of limitations.

Under the one-year statute of limitations, the deadline for appellants to file a claim for refund is one year from the date of overpayment. Appellants filed their 2019 return, treated by respondent as a claim for refund, on August 27, 2024. Therefore, appellants may claim a refund of any payments made within one year of the date of the claim for refund (i.e., on or after August 27, 2023). A payment of \$36,748.68 was made on appellants' account on

³ For the 2019 tax year, respondent postponed the filing deadline to July 15, 2020, due to COVID-19. See *State Postpones Tax Deadlines Until July 15 Due to COVID-19 Pandemic*, news release (Mar. 18, 2020) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>. However, respondent's COVID-19 related postponement of the 2019 return filing deadline to July 15, 2020, did not change the original due date for filing a return. (*Appeal of Bannon*, 2023-OTA-096P.)

May 14, 2022, which respondent applied the against tax, penalties, fees and applicable interest for the 2019 tax year, resulting in an overpayment credit of \$28,793.08. Because this overpayment was made more than one year before appellants filed their claim for refund, it is barred under the one-year statute of limitations.⁴

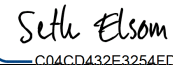
On appeal, appellants assert that respondent “moved” appellants’ claim for refund for the 2020 tax year to the 2019 tax year and subsequently denied it due to the expiration of the statute of limitations. However, the record in this appeal demonstrates that on June 21, 2023, appellants made a payment of \$28,700.37 for the 2020 tax year and \$7,179.47 of the resulting overpayment for the 2020 tax year was applied as a credit to the 2021 tax year. Respondent subsequently issued appellants a \$17,632.81 refund, the remaining overpayment balance for the 2020 tax year, after applicable tax, penalties, fees, and interest. Thus, respondent did not apply any amount of appellants’ 2020 payments to the 2019 tax year.

HOLDING

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


DISPOSITION

Respondent’s action denying appellants’ claim for refund is sustained.

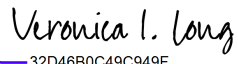
Signed by:

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 Seth Elsom
 Hearing Officer

We concur:

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 Sara A. Hosey
 Administrative Law Judge

Signed by:

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 Veronica I. Long
 Administrative Law Judge

Date Issued: 9/17/2025

⁴ Appellants subsequently made an additional payment of \$4,840 on August 27, 2024, within one year of filing their claim for refund. Respondent refunded this payment to appellants on September 16, 2024.