

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

In the Matter of the Appeal of: ) OTA Case No. 250118470  
**L. GARDNER** )  
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**OPINION**

Representing the Parties:

For Appellant: L. Gardner  
For Respondent: David C. Cortez, Attorney  
For Office of Tax Appeals: Jasmin Kongsberg, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Gardner (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,461.88 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 is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely California Income Tax Return for the 2019 tax year.
2. Respondent received information that appellant had income sufficient to trigger the filing requirement for the 2019 tax year. On June 8, 2021, respondent issued a 2019 Demand for Tax Return (Demand) demanding that appellant file a return or explain why no return was required. After corresponding with appellant, respondent allowed appellant until August 13, 2021, to file a return. However, respondent did not receive a return by August 13, 2021 due date.

3. Respondent issued a Notice of Proposed Assessment (NPA) on September 24, 2021, which informed appellant of a tax liability, a late filing penalty, a demand penalty, and a filing enforcement fee, plus interest.
4. Appellant did not timely protest the NPA and it became final on November 23, 2021. Respondent began collection action and on May 31, 2022, received a payment of \$6,626.97 which satisfied the liability.
5. Appellant filed an untimely 2019 return on October 3, 2024, claiming an overpayment of \$4,890.<sup>1</sup>
6. Respondent accepted the return as filed, treating it as a claim for refund.
7. After reductions of the imposed penalties and interest, appellant's account reflected an overpayment of \$3,461.88. On October 24, 2024, respondent denied appellant's claim for refund in this amount citing the expiration of the statute of limitations.
8. This timely appeal followed.

#### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306, which provides that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from when 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. A calendar-year taxpayer must file their returns by April 15 following the close of the calendar year. (R&TC, § 18566.)

The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a refund claim bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Although the fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

However, the statute of limitations period may be suspended, and thus the period for filing a claim for refund extended, if the taxpayer is financially disabled. (R&TC, § 19316(a).) For purposes of this section, the individual taxpayer is financially disabled if they are unable to manage their financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of

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<sup>1</sup> The available evidence shows that respondent received appellant's return on October 9, 2024. However, there is no dispute that appellant filed her return on October 3, 2024.

not less than 12 months. (R&TC, § 19316(b)(1).)<sup>2</sup> To establish financial disability, R&TC section 19316(a) provides that the taxpayer must adhere to respondent's procedures. This period of financial disability must occur during the limitations period. (*Appeal of Gillespie*, 2018-OTA-052P.)

Here, appellant failed to file a timely 2019 return. Thus, the four-year statute of limitations to file a claim for refund began to run on the return's original due date of April 15, 2020, and expired four years later on April 15, 2024.<sup>3</sup> Appellant filed her claim for refund on October 3, 2024, which is after the expiration of the statute of limitations period. Therefore, appellant's claim for refund is barred by the four-year statute of limitations.

Additionally, the one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. Here, respondent received a payment on May 31, 2022, but appellant did not file a claim for refund until October 3, 2024, well after the one-year statute of limitations expired. Thus, because appellant made no payments in the year prior to the filing of her claim for refund, she cannot be refunded under the one-year statute of limitations provision.

On appeal, appellant argues that the statute of limitations should be suspended and asserts that a combination of stress and medical issues made it challenging to file a 2019 return in a timely manner. During this appeal, respondent provided appellant with an FTB Form 1564, which allows respondent to consider whether appellant was financially disabled. However, OTA has not received an FTB Form 1564 completed by appellant or appellant's doctor during this appeal. Appellant also has not provided any other evidence of an illness, such as medical records or an affidavit from a physician. Appellant's unsupported assertions are insufficient to meet her burden of proof.

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<sup>2</sup> Under R&TC section 19316(b)(2) an individual taxpayer shall not be considered to be "financially disabled" for any period during which that individual's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. OTA finds no evidence that this provision of the personal income tax law applies in this appeal.

<sup>3</sup> Due to the COVID-19 pandemic, for the 2019 tax year, respondent granted taxpayers a filing extension until July 15, 2020, pursuant to R&TC section 18527. However, despite this extension, the four-year statute of limitations period for the purpose of filing a claim for a refund still expired on April 15, 2024, because R&TC section 18527 does not grant respondent the authority to alter the statutorily prescribed filing deadlines set forth in R&TC section 18566. (*Appeal of Bannon*, 2023-OTA-096P.)

HOLDING

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

DISPOSITION

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

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Keith T. Long  
Administrative Law Judge

We concur:  
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Seth Elsom  
Administrative Law Judge

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Heather Boyd  
Administrative Law Judge

Date Issued: 10/30/2025