

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. LISTER) OTA Case No. 240516165
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OPINION

Representing the Parties:

For Appellant: M. Lister
For Respondent: John Ly, Attorney
Jaclyn Zumaeta, Deputy Chief Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Lister (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,200.15 for the 2018 tax year.

Office of Tax Appeals (OTA) Panel Members Asaf Kletter, Teresa A. Stanley, and Erica Parker held an oral hearing for this matter in Cerritos, California on August 13, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether the statute of limitations bars appellant’s claim for refund for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return (return) for the 2018 tax year.
2. FTB issued appellant a Request for Tax Return. Appellant did not respond.
3. FTB later issued appellant a Notice of Proposed Assessment which estimated appellant’s income and proposed a tax liability, penalties, fees, and interest. Appellant did not timely respond, and the NPA became final and payable. FTB imposed a collection fee of \$316 and began involuntary collection action.
4. On June 28, 2022, FTB collected a payment of \$5,423.16.

5. On January 29, 2024, appellant untimely filed the 2018 return, reporting zero total tax, an Earned Income Tax Credit (EITC) of \$93, an overpayment of \$93, and requesting a refund of \$93. Appellant signed the return and dated it November 1, 2023.
6. FTB accepted appellant's 2018 return and abated the penalties, the filing enforcement fee, and applicable interest. In a Statute of Limitations notice dated February 15, 2024, FTB explained that it calculated a total overpayment of \$5,200.15¹ but disallowed appellant's claim for refund because the statute of limitations had expired.
7. Appellant filed this timely appeal.
8. On appeal, appellant provides two certified mail receipts dated April 15, 2022, one for mail sent to the Franchise Tax Board, and the second for mail sent to the IRS. Appellant also testified at the hearing that he filed the 2018 California income tax return on April 15, 2022. FTB provides the California 2017 tax year account detail, which shows that appellant's 2017 California income tax return was filed on April 15, 2022, and appellant's federal account transcript for the 2017 tax year as of July 1, 2024, which shows that the 2017 federal income tax return was filed on April 27, 2022. FTB also provides appellant's federal account transcript for the 2018 tax year as of June 5, 2024, which shows that the 2018 federal return was filed on March 5, 2024, and an internal call log including a comment for an incoming call from appellant on July 7, 2023.

DISCUSSION

The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars the refund. (*Appeal of Estate of Gillespie, supra.*)

Here, the parties dispute the date that appellant filed the 2018 return. A taxpayer attempting to provide that a paper return was timely mailed must offer evidence, such as a registered or certified mail receipt, that the return was timely mailed. (Gov. Code, § 11003; Internal Revenue Code (IRC), § 7502; R&TC, § 21027, *Appeal of Fisher*, 2022-OTA-337P.) R&TC section 21027(b) provides that Treasury Regulation section 301.7502-1, as revised on January 10, 2001, shall be applicable for prima facie evidence of delivery and the postmark date

¹ Appellant's account reflected total payments of \$5,516.16, comprised of the \$5,423.16 payment and the \$93 EITC. Offsetting appellant's payments was the \$316 cost collection fee (\$5,516.16 - \$316 = \$5,200.16). FTB wrote off the remaining liability of \$.01.

for FTB filings.² If a document is sent by U.S. certified mail, and the sender's receipt is postmarked by the postal employee to whom the document is presented, the date of the U.S. postmark on the receipt is treated as the postmark date of the document. (Treas. Reg. § 301.7502-1(c)(2).) Proof that a postmarked certified mail sender's receipt was properly issued and that the envelope was properly addressed to the agency constitutes prima facie evidence that the document was delivered to the agency. (Treas. Reg. § 301.7502-1(e)(1).)

On appeal, appellant provides a certified mail receipt dated April 15, 2022, addressed to FTB, and testified that he filed the 2018 California income tax return on April 15, 2022. On appeal, FTB provides the 2017 California tax year account detail, which shows that appellant's 2017 California income tax return was filed on April 15, 2022. FTB also argues that, according to the 2017 federal account transcript, the 2017 federal income tax return was filed on April 27, 2022. FTB argues that the evidence strongly suggests that the certified mail receipt corresponds to the 2017 return.

Appellant also provides a second certified mail receipt dated April 15, 2022, addressed to the IRS, and argues that it shows that he timely filed the 2018 return. In response, FTB provides appellant's 2018 federal account transcript. The 2018 federal account transcript shows that the 2018 federal return was filed on March 5, 2024. FTB asserts that the evidence shows that the 2018 federal return was late, which supports FTB's records showing that the 2018 return was filed on January 9, 2024. FTB also provides its internal call log which includes a comment for an incoming call from appellant on July 7, 2023. The comment states that on that date, FTB advised the taxpayer that he needs to file a 2018 return. FTB argues that the evidence strongly suggests that the certified mail receipt corresponds to the 2017 federal return.

Based on the evidence in the record, including appellant's testimony at the hearing, OTA finds that FTB established that appellant untimely filed the 2018 return on January 29, 2024.

R&TC section 19306(a) provides 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment.

² Effective January 1, 2002, California amended R&TC section 21027 to add subdivisions (a)(2) and (b) to conform with specific provisions in IRC section 7502 regarding "designated delivery service" and "electronic filing." Aside from those specific provisions, R&TC section 21027 does not conform to IRC section 7502 in its entirety. (See R&TC, § 21027, as amended by Stats. 2001, ch. 543 (SB 1185), § 20, West's Cal. Legis. Service.)

Because appellant untimely filed the 2018 return on January 29, 2024, the applicable four-year statute of limitations period for the refund claim runs from the original due date of the return, April 15, 2019, and expired on April 15, 2023, four years later. (See, R&TC, §§ 18655, 19306(a).) The one-year statute of limitations period applies to overpayments made within one year of the date of the refund claim. The EITC is deemed to have been paid on April 15, 2019, which is the original filing due date of appellant's 2018 return (without regard to any extension to file). (See *Appeal of Sotelo*, 2025-OTA-035P.) FTB collected a payment from appellant on June 28, 2022. Therefore, the one-year statute of limitations expired on June 28, 2023, one year later. The later of the four-year and one-year statute of limitations is April 15, 2023. However, appellant filed the refund claim on January 29, 2024. Accordingly, appellant's claim for refund is barred by the statute of limitations.

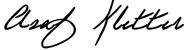
Appellant argues that he felt that he was treated unfairly by FTB. However, there is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

HOLDING

The statute of limitations bars appellant's claim for refund for the 2018 tax year.

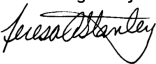
DISPOSITION

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


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Asaf Kletter
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 10/14/2025