

2. Respondent issued a Demand for Tax Return (Demand) to appellant D. Kendall dated December 15, 2020. The Demand required, by January 20, 2021, that appellant D. Kendall submit a copy of a previously filed 2018 California tax return, file a 2018 California Tax Return, or explain why appellant D. Kendall did not have a filing requirement. The Demand informed appellant D. Kendall that should she fail to respond to the Demand, respondent would assess tax, penalties, fees and interest based on the available information.
3. Respondent did not receive a response from appellant D. Kendall, so respondent issued a Notice of Proposed Assessment (NPA) dated March 26, 2021. The NPA proposed tax of \$3,471, a late filing penalty of \$867.75, a demand penalty of \$1,230.50, a filing enforcement fee of \$97 and interest, for a total proposed assessment of \$6,111.23. The notice informed appellant D. Kendall that the NPA would become due and payable unless appellant D. Kendall submitted a tax return or protest.
4. Appellant D. Kendall did not file a return or protest the NPA, and it became final.
5. Respondent initiated collection activity and collected a payment of \$6,170.20² on August 13, 2021.
6. Appellants subsequently filed their joint 2018 California Income Tax Return (return), which respondent received on May 28, 2024. The return reported total tax of \$1,576, a withholding credit of \$1,451, and showed a balance due of \$125. Respondent accepted the return and reduced the late filing penalty to \$125, the demand penalty to \$394, and reduced interest. Respondent did not issue a refund or credit of the remaining credit of \$5,395.82 because the statute of limitations had expired.
7. This timely appeal to OTA followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall 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 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 taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no reasonable cause or equitable basis for suspending the statute

² Respondent received a total payment of \$8,121.64. Respondent applied \$6,170.20 to the 2018 tax year and \$1,951.44 to the 2017 tax year which is not at issue in this appeal.

of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Here, appellants did not file their 2018 return (treated as a claim for refund) until May 28, 2024. Because appellants did not file a timely tax return during the extended filing period, the first four-year statute of limitations period is inapplicable. The second statute of limitations period expired on April 15, 2023, four years from the original due date of April 15, 2019, for appellants' 2018 return. (R&TC, §§ 19306(a), 18566.) Because appellants did not file their 2018 return (treated as a claim for refund) until May 28, 2024, more than a year after the deadline of April 15, 2023, appellants' claim for refund is also untimely under the second four-year statute of limitations.

The one-year statute of limitations period runs one year from the date of payment. Here respondent collected the payment on August 13, 2021. Thus, the one-year statute of limitations expired on August 13, 2022. As such, appellants' May 28, 2024, claim for refund is beyond the one-year statute of limitations.

On appeal, appellants contend that appellant R. Kendall suffered severe medical issues and appellant D. Kendall cared for him. Appellants also assert that they are retired and suffering from financial issues due to the assessment of penalties and fees. Appellants argue that respondent wrongly collected a large amount from their account. Appellants further assert that their claim for refund was filed only one month late.

It is undisputed that appellants' claim for refund was not filed timely. While OTA sympathizes with appellants' medical and financial difficulties, without a timely refund claim, respondent does not have the statutory authorization to credit or refund amounts paid, and OTA does not have statutory authorization to require respondent to do so. (*Appeal of Estate of Gillespie, supra.*) Additionally, OTA may not suspend the statute of limitations based on equity or reasonable cause. (*Appeal of Benemi Partners, L.P., supra.*)

HOLDING

Appellants' claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

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

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

Date Issued: 11/20/2025