

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

In the Matter of the Appeal of: ) OTA Case No. 241218404  
**P. CUSSON** )  
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**OPINION**

Representing the Parties:

For Appellant: P. Cusson  
For Respondent: AnaMarija Antic-Jezildzic,  
Program Specialist

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Cusson (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$10,129.54 for the 2019 tax year.

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

**FACTUAL FINDINGS**

1. On November 2, 2020, appellant untimely filed his 2019 California Non-Resident or Part-Year Resident Income Tax Return reporting tax owed of \$9,041, an underpayment of estimated tax penalty (estimated tax penalty) of \$317, and the total amount due of \$9,358, which appellant paid on the same date.
2. Respondent subsequently sent appellant a State Income Tax Balance Due Notice imposing a late-filing penalty, an estimated tax penalty, and applicable interest in the total amount of \$1,844.62, which appellant paid on December 8, 2020.
3. On February 6, 2024, respondent sent appellant a notice advising appellant that he had an unclaimed estimated nonwage withholding credit of \$8,157 for 2019 and that he had

to file an amended tax return to claim the credit before the applicable statute of limitations date.

4. On September 3, 2024, appellant filed his 2019 amended tax return reporting a refund due of \$8,157.
5. Respondent subsequently processed appellant's 2019 amended tax return, reduced the late-filing penalty, abated the estimated tax penalty, and treated the 2019 amended tax return as a claim for refund of \$10,129.54.<sup>1</sup>
6. On October 1, 2024, respondent denied appellant's claim for refund of \$10,129.54 for 2019 because the statute of limitations had expired.
7. This timely appeal followed.

### DISCUSSION

R&TC section 19306(a) provides that no credit or refund will be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if filed within the extended filing period; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. For purposes of the one-year statute of limitations, estimated tax payments and withholdings are deemed paid on the original due date of the return. (R&TC, § 19002(c)(1)-(2), (d)(2).) The taxpayer has the burden of proof to establish entitlement to a refund and that the refund claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for refund bars a refund.<sup>2</sup> (*Appeal of Benemi Partners, L.P.*, *supra.*) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional unfairness is necessary to allow for a more workable tax enforcement system and is redeemed by the clarity imparted. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant appears to argue that because his accountant advised him that the extended due date of his 2019 tax return was on October 20, 2020, appellant's 2019 amended tax return

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<sup>1</sup> Respondent increased appellant's reported claim for refund by \$1,972.54, which is the sum of the estimated tax penalties paid by appellant on November 2, 2020, and late-filing and estimated tax penalties paid by appellant on December 8, 2020, less the recalculated amounts of those penalties based upon appellant's September 3, 2024 claim for refund.

<sup>2</sup> Although not applicable here, financial disability due to a medically determinable physical or mental impairment is an example of an exception that may suspend the general statute of limitations period for refund claims. (R&TC, § 19316; *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

filed on September 3, 2024, was timely filed because it was filed within four years of October 20, 2020. Appellant is mistaken. The first four-year statute of limitations period does not apply here because appellant did not file his 2019 tax return within the extended filing period. Under the second four-year statute of limitations, appellant was required to file a refund claim no later than April 15, 2024, which is four years from the original filing due date of April 15, 2020, for his 2019 tax return.<sup>3</sup> Under the one-year statute of limitations, appellant was required to file: (1) a refund claim for his nonwage withholding credit of \$8,157 no later than April 15, 2021, which is one year from the date withholdings are deemed paid on April 15, 2020; (2) a refund claim for \$127.92 in excess of the recalculated estimated tax penalties no later than November 2, 2021, which is one year from the date appellant paid these penalties on November 2, 2020; and (3) a refund claim for \$1,844.62 in excess of the recalculated late-filing and estimated tax penalties no later than December 8, 2021, which is one year from the date appellant paid these penalties on December 8, 2020. Appellant, however, untimely filed his 2019 amended tax return on September 3, 2024, after both the second four-year and one-year statute of limitations periods expired.

In the alternative, appellant contends he has reasonable cause for failing to timely file his 2019 amended tax return because appellant's employer did not timely send him a California Form 592-B, Resident and Nonresident Withholding Tax Statement, listing the California tax withheld from his distributions. Appellant states he was only made aware of the overpayment when respondent informed him of his unclaimed withholding credit in the spring of 2024. Appellant's employer's failure to timely notify him of his 2019 California tax withheld does not establish reasonable cause or an equitable basis to suspend the statute of limitations. (See *Appeal of Benemi Partners, L.P.*, *supra*.) In addition, respondent has no duty to discover overpayments and was not required to inform appellant of his overpayment. (See *Appeal of Cervantes* (74-SBE-029) 1974 WL 2844; *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Therefore, appellant's claim for refund is barred under R&TC section 19306(a).

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<sup>3</sup> The COVID-19 state of emergency postponed the 2019 tax year original filing and payment deadlines from April 15, 2020, until July 15, 2020. (See [www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-5-april-15-tax-day-postponed-until-july-15-2020.html](http://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-5-april-15-tax-day-postponed-until-july-15-2020.html).) Treasury Regulation section 301.7508A-1(b)(4) provides that "[t]o the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return." Thus, respondent's postponement of the original filing due date to July 15, 2020, did not change the original due date of April 15, 2020, upon which the four-year statute of limitations for refund claims is based. (*Appeal of Nguyen*, 2025-OTA-333P.)

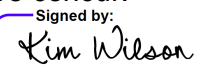
HOLDING


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

DISPOSITION

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

Signed by:  
  
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Hans Famularo  
Administrative Law Judge

We concur:  
Signed by:  
  
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Kim Wilson  
Hearing Officer

Signed by:  
  
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Seth Elsom  
Hearing Officer

Date Issued: 12/18/2025