

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. WILSON) OTA Case No. 250421887
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OPINION

Representing the Parties:

For Appellant: S. Wilson

For Respondent: Ganeet Atwaal, Legal Analyst

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Wilson (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,882.68 for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) 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. As of the date briefing for this appeal closed, appellant has not timely filed a 2017 California income tax return.
2. Respondent sent appellant a Request for Tax Return (Request), informing her that respondent obtained information indicating that she may have received sufficient income to require the filing of a 2017 California income tax return. Appellant did not respond to the Request.
3. Respondent subsequently sent appellant a Notice of Proposed Assessment, which estimated appellant’s income and proposed to assess tax of \$1,840, a late filing penalty

of \$460, plus applicable interest, for a total balance due of \$2,502.04. Between July 27, 2020, and April 14, 2021, respondent sent appellant three collection notices requesting payment of the balance due. Respondent subsequently imposed a collection cost recovery fee (collection fee) of \$316.

4. Appellant subsequently entered into a collection agreement with respondent and made 13 payments totaling \$3,176.68 between November 15, 2021, and June 9, 2023,¹ on the 2017 tax year's balance due.
5. On September 15, 2024, appellant filed a 2017 California Resident Income Tax Return (Return), which reported zero total tax, claimed an earned income tax credit (EITC) of \$56, and requested a refund of the EITC. Respondent processed appellant's Return and treated it as a claim for refund.
6. Respondent subsequently sent appellant a letter denying appellant's claim for refund of \$2,882.68² due to the expiration of the statute of limitations.
7. This timely appeal followed.

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*).)

Appellant filed the Return, which respondent treated as a claim for refund, after October 15, 2018, when the extension period to file expired. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, §18657(a).) Thus, the first four-year statute of limitations period concerning returns filed on extension does not apply. The original due date for filing the Return was April 15, 2018, and the second four-year statute of limitations expired four years later, on April 15, 2022. (See R&TC, §§ 18566, 19306(a).) On appeal, appellant asserts that she

¹ Appellant's final payment of this period was \$2,564.68. It is unclear whether appellant made this payment under the terms of the installment agreement.

² Respondent calculated appellant's claim for refund as the sum of appellant's total payments of \$3,176.68 plus the EITC of \$56, minus the collection fee of \$316, minus an installment agreement fee of \$34, which equals \$2,882.68.

initially filed the Return in March 2022, within the four-year statute of limitations for filing a claim for refund.³ Appellant claims that she discovered missing deductions during a September 2024 consultation with her tax preparer and filed an amended Return on September 11, 2024, to claim the deductions. Respondent received the return on September 15, 2024.

A document filed with respondent is considered filed on the date the document is received by respondent. (See *U.S. v. Lombardo* (1916) 241 U.S. 73, 76-77 [documents filed with the government are considered filed when delivered and received by the proper agency or official].) However, there is an exception for documents which are mailed to respondent using the United States Postal Service (USPS) or a bona fide commercial delivery service. Such documents, when properly addressed with postage prepaid, are deemed filed on the date shown by the cancellation mark stamped on the envelope containing the document, or, alternatively, the date of mailing, provided there is sufficient proof to establish that the document was mailed at an earlier time. (Gov. Code, § 11003.) Thus, regardless of when respondent received the document, a showing by appellant that a Return claiming a refund was mailed to respondent in March of 2022 under the above conditions means that the Return was filed within the four-year statute of limitations for making a claim for refund.

Here, however, appellant does not provide any proof of mailing of the Return that she asserts she filed in March 2022, such as a USPS certified or registered mailing receipt. Additionally, the record in this appeal does not show that appellant filed an amended Return. Because the exception does not apply, the Return is deemed filed on September 15, 2024, when respondent received it. Therefore, appellant's September 15, 2024 claim for refund is untimely under the second limitations period.

Regarding the one-year statute of limitations, the time for appellant to file a claim for refund is one year from the date of overpayment. Appellant made payments of \$3,176.68 between November 15, 2021, and June 9, 2023, for the 2017 tax year. Appellant filed the claim for refund on September 24, 2024, after the statute of limitations period expired for the latest payment, on June 9, 2024. Therefore, appellant's claim for refund is also barred under the one-year statute of limitations.

Appellant explains that she attempted to file the Return in 2020 but "Covid hit." Appellant asserts that she did not receive forwarded mail following a move out of state and had difficulty obtaining Form 1099 statements from the payor. Appellant's arguments are reasonable cause type arguments. However, there is no reasonable cause or equitable basis

³ Appellant asserts that the Return reported an amount due of \$853 rather than a refund.

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.*) Although appellant asserts that she did not receive forwarded mail, the record in this appeal demonstrates that appellant entered into an installment agreement to pay the 2017 tax year account balance and began making payments on November 15, 2021, within the statute of limitations period. However, she did not file the claim for refund with respondent until September 15, 2024, after the expiration of the statute of limitations.


Appellant further asserts that she was not aware of the statute of limitations for filing a claim for refund, nor was she informed of it by her tax preparer. Although appellant asserts that she was not aware or informed of the statute of limitations, respondent has no duty to discover or provide notice of a taxpayer's overpayment of income tax. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) 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. (*Benemi, supra.*) 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.*) Although OTA sympathizes with the appellant's circumstances, based upon the foregoing, appellant's claim is barred by the statute of limitations.

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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Seth Elsom
Hearing Officer

Date Issued: 12/18/2025