

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 250419119
M. VOGEL AND)
Y. VOGEL)
_____)

OPINION

Representing the Parties:

For Appellants: M. Vogel
For Respondent: Hubeyb Kabulantok, Attorney
Alisa Pinarbarasi, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Vogel and Y. Vogel (appellants) appeal actions by the Franchise Tax Board (respondent) denying appellants' claims for refund of \$1,947.00 for the 2017 tax year, \$2,340.00 for the 2018 tax year, and \$1,896.00 for the 2019 tax year.

Appellants 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).)

Office of Tax Appeals (OTA) Administrative Law Judge Greg Turner held a virtual oral hearing for this matter on December 16, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellants timely filed their refund claims for the taxable years at issue.

FACTUAL FINDINGS

1. Appellants timely filed California Resident Income Tax Returns (Forms 540) for the 2017 tax year on April 9, 2018, the 2018 tax year on April 1, 2019, and the 2019 tax year on July 7, 2020, reporting various items of income and deduction which were accepted

- and processed as filed by respondent. Payments reported by appellants on those returns consisted of withholding credits.
2. On December 13, 2024, appellants filed amended tax returns for the 2017, 2018, and 2019 tax years (Forms 540X) claiming a reduction to reported California adjusted gross income in each of the taxable years at issue and requested that overpayments of \$1,947 for the 2017 tax year, \$2,340 for the 2018 tax year, and \$1,896 for the 2019 tax year be refunded.
 3. Respondent processed and accepted the amended returns and treated them as claims for refund.
 4. On January 13, 2025, and on February 26, 2025, respondent issued Statute of Limitations letters denying appellants' claims for refund for the taxable years at issue on the grounds they were all filed after the expiration of the statute of limitations.
 5. Appellants timely filed this appeal.

DISCUSSION

The taxpayer has the burden of proof to show entitlement to a refund and that the claim for refund is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Bindley*, 2019-OTA-179P.) R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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 within the extended filing period 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.

Because appellants filed their 2017 and 2018 original returns prior to their due dates, the applicable statute of limitations is four years from the due date of the returns. Because the 2019 return was filed by the extended due date, the applicable statute of limitations is four years from the date of filing. The latest of the four-year statute of limitations (that of the 2019 tax year) expired on July 7, 2024,¹ well before December 13, 2024, when appellants filed amended returns for each of the taxable years at issue.

¹ For the 2017 tax year, the return was due on April 17, 2018, and the SOL expired on April 15, 2021. For the 2018 tax year, the return was due on April 15, 2019, and the SOL expired on April 15, 2022. For the 2019 tax year, appellants filed the return on July 7, 2020, and the SOL expired on July 7, 2024.

The one-year statute of limitations applies to claims for refund made within one year of the date payment is made. (R&TC, § 19306(a).) For the purposes of R&TC section 19306(a), however, tax withholdings are deemed paid on the due date of the return. (R&TC, § 19002(c)(1).) Because the payments sought for refund here were solely from withholding, the latest of the one-year statute of limitations (that for the 2019 tax year) expired on April 15, 2020.² Consequently, each of appellants' claims for refund fall outside the one-year statute of limitations under R&TC section 19306 as well.

The record highlights an unfortunate and too-common occurrence of a protracted battle to secure recognition of on-the-job injuries entitling appellants to retroactive recognition of disability retirement benefits which California excludes from taxation. (See R&TC, § 17131; Internal Revenue Code, § 104(a)(1).) There is no dispute regarding appellants' entitlement to that recognition, or that the approval process extended past the four-year filing deadline for filing claims for refund for the taxable years at issue. (See R&TC, § 19306.)

The language of R&TC section 19306 is explicit and strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Except for some narrow circumstances associated with financial disability, which appellants have not alleged here,³ a taxpayer's failure to file a claim for refund within the statutory period bars a refund. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) The statute of limitations is unforgiving, and there is no

² For the 2017 tax year, withholding payments were deemed paid on the date the return was due which was April 17, 2018, and the one-year SOL expired on April 17, 2019. For the 2018 tax year, the withholding payments were deemed paid on April 15, 2019, and the SOL expired on April 15, 2020. For the 2019 tax year, payments were deemed paid on April 15, 2020, and the SOL expired on April 15, 2021. (See *Appeal of Nguyen*, 2025-OTA-333P, a *postponement* of return filing dates does not extend the original due date of the return for purposes of calculating the SOL.)

³ R&TC section 19316(a) provides that the time for filing a claim for refund may be suspended if a taxpayer is "financially disabled," as defined in R&TC section 19316(b). The running of the period for filing a claim for refund pursuant to R&TC section 19306 is suspended if: (1) an individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months; and (2) there is no spouse or other legally authorized person to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b).) When a taxpayer alleges financial disability as cause to suspend the statute of limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs and that period must occur during the limitations period. (*Appeal of Estate of Gillespie, supra.*)

reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347; *Appeal of Benemi Partners, L.P., supra.*) Neither the ill health of a taxpayer nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie, supra.*) Therefore, appellants have not satisfied their burden of proof in showing that the claims for refund are timely.


While not determinative of the outcome here, appellants were not completely without recourse. Upon application for recognition of the disability, appellants could have filed “protective claims”⁴ for refund for the taxable years at issue. A protective claim ensures possible refunds are not lost when resolution of unresolved tax matters stretches beyond the statute of limitations. Appellants, unfortunately, did not file such claims here.

HOLDING

Appellants untimely filed their refund claims for the taxable years at issue.

DISPOSITION

Respondent’s actions denying appellants’ claims for refund are sustained.

Signed by:

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Greg Turner
Administrative Law Judge

Date Issued: 2/12/2026

⁴ A “protective claim” is a claim for refund or a tax year where unresolved tax matters are pending. See <https://www.ftb.ca.gov/help/disagree-or-resolve-an-issue/claim-for-refund.html#Protective-claim>.