

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
N. GOMEZ CALVA) OTA Case No. 240917410
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OPINION

Representing the Parties:

For Appellant: N. Gomez Calva
For Respondent: Arathi Ramalingam, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Gomez Calva (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$13,890.20 for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether OTA has jurisdictional authority to hear and decide appellant’s appeal of respondent’s denial of appellant’s claim for refund.

FACTUAL FINDINGS

1. After receiving information that appellant earned sufficient income to be required to file a tax return for the 2016 tax year, respondent issued a Demand for Tax Return (Demand) to appellant dated April 10, 2018. The Demand instructed appellant to respond to the Demand by May 16, 2018, by either filing a return, providing evidence that appellant had filed a return, or explaining why appellant was not required to file a return.
2. Appellant did not respond to the Demand by the due date. Therefore, respondent issued appellant a Notice of Proposed Assessment (NPA) which advised appellant that the NPA would become final on August 10, 2018, and thus, the proposed tax would become due, unless appellant filed a tax return or protested the NPA.

3. Because appellant did not respond to the NPA, it became final and respondent commenced collection action. The amount due exceeded \$50,000 of taxes, penalties, fees, and interest. As a result of collection action, transfers from other tax years, and application of a federal tax refund, respondent credited \$13,058.01 to appellant's account during the period of May 7, 2019, to May 15, 2023. In addition, appellant had withholding credits in the amount of \$1,016.
4. On June 9, 2023, appellant filed a 2016 tax return. Appellant's return reported zero tax. Respondent accepted the return and treated it as a claim for refund. Respondent determined that appellant had made three payments within one year of the claim for refund, on June 27, 2022, December 28, 2022, and May 15, 2023, totaling \$150. Respondent transferred \$150.27 from appellant's 2016 tax year to the 2018 tax year, reflecting the payments made within one year of appellant's claim for refund, plus interest.
5. On June 28, 2023, respondent issued a notice denying appellant's claim for refund for the remaining overpayment in the amount of \$13,890.20.¹ The denial gave appellant until September 26, 2023, to file an appeal with OTA.
6. Appellant filed this appeal with OTA on September 6, 2024

DISCUSSION

OTA has jurisdiction to hear and decide an appeal of respondent's denial of a perfected claim for refund, provided that the appeal has been timely submitted to OTA within 90 days from the date respondent mails a notice denying a claim for refund. (Cal. Code Regs., tit. 18, §§ 30103(a)(3), 30203(a)(2).)² Appellant offers several reasons why the refund claim should be granted, such as hardships caused by the COVID-19 pandemic, caring for an ill relative and a death of a family member. Appellant states the combination of these personal challenges and hardships delayed the filing of the tax return. Appellant further asserts that she was not aware of the statute of limitations.

Here, respondent issued appellant a notice on June 28, 2023, denying appellant's claim for refund for the 2016 tax year. Thus, appellant had 90 days, or until September 26, 2023, to timely file an appeal with OTA. (See Cal. Code Regs., tit. 18, § 30203(a)(2); R&TC,

¹ This amount is comprised of \$14,074.28 of payments, transfers, and credits, less \$33.81 of fees and a \$150.27 transfer to appellant's 2018 tax year.

² R&TC section 19324(a) provides that respondent's denial of a claim for refund is final at the expiration of 90 days from the mailing of the denial notice, unless the taxpayer appeals in writing to OTA within the 90-day period.

§ 19324(a).) Appellant submitted a request for appeal of the denied claim for refund with OTA, approximately one year later, on September 6, 2024. Thus, appellant failed to file the request for appeal with OTA by the September 26, 2023 deadline. Accordingly, OTA lacks jurisdiction to hear and decide this appeal.

HOLDING

OTA does not have jurisdictional authority to hear and decide appellant’s appeal of respondent’s denial of appellant’s claim for refund.

DISPOSITION

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

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Erica Parker
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Erica Parker
Hearing Officer

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 2/12/2026