

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

In the Matter of the Appeal of: )  
**B. ESLAVA** ) OTA Case No. 241218198  
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**OPINION**

Representing the Parties:

For Appellant: Kevin O'Connell, CPA

For Respondent: Rosemary Villasenor, Senior Legal Analyst

K. SHELTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324 appellant B. Eslava (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$15,847.35 for the 2018 tax year and \$147 for the 2019 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).

**ISSUES**<sup>1</sup>

1. Whether appellant is entitled to the refund claimed for the 2018 tax year.
2. Whether appellant is entitled to the refund claimed for the 2019 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file a California tax return for either the 2018 or 2019 tax years.
2. Respondent received information from a third party that appellant received income in the 2018 tax year and likely had a return filing obligation. Accordingly, respondent issued appellant a Request for Tax Return. Appellant did not respond.

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<sup>1</sup> Appellant also identifies the 2020, 2021, 2022, and 2023 years in the appeal to OTA. However, OTA lacks jurisdiction over these years as respondent has not issued either a Notice of Action or a denial of a claim for refund for any of these years and, accordingly, these years will not be considered.

3. Respondent then issued appellant a Notice of Proposed Assessment (NPA) for the 2018 tax year. In the NPA, respondent used the third-party report of income to estimate appellant's taxable income, and proposed a total tax of \$11,006, a late-filing penalty of \$2,751.50, and applicable interest.
4. Respondent issued appellant two notices of income tax due for the 2018 tax year, as well as a notice of respondent's intent to levy and lien. Respondent then began collection action and received a \$2,000 payment on April 22, 2022. Thereafter, appellant made payments of \$14,138.15 and \$52.20 on September 24, 2022, and October 28, 2022, respectively. Respondent received total payments of \$16,190.35 on appellant's 2018 account.
5. On October 24, 2024, appellant filed a Form 540, California Resident Income Tax Return, for the 2018 tax year (2018 Return). On the 2018 Return, appellant reported a total tax of \$0, and an overpayment of tax of \$7 from a refundable earned income tax credit (EITC). Appellant requested on the 2018 Return to have the refundable credit of \$7 from the EITC applied to pay appellant's tax liability for the 2019 tax year. Respondent accepted appellant's 2018 Return and treated it as a claim for refund. Respondent reduced the amount of tax that it had previously estimated from \$11,006 to \$0, abated the late-filing penalty, disallowed appellant's requested transfer of the \$7 EITC to the 2019 tax year because it was beyond the statute of limitations, and determined that appellant had an overpayment of \$15,847.35.
6. Also on October 24, 2024, appellant filed a Form 540, California Resident Income Tax Return, for the 2019 tax year (2019 Return). On the 2019 Return, appellant reported total tax of \$0 and overpaid tax of \$154, comprised of both a refundable EITC of \$147 and the credit of \$7 from the 2018 tax year. Appellant requested on the 2019 Return to have both refundable credits of \$154 from the EITC applied to pay appellant's tax liability for the 2020 tax year. Respondent treated the 2019 Return as a claim for refund in the amount of \$147.
7. Respondent issued appellant two separate Statute of Limitations letters (Letters), one for each of appellant's claims for refund for the 2018 and 2019 tax years. Respondent denied each claim for refund as untimely because appellant filed each claim after the period of limitations expired.
8. Appellant timely appealed.

## DISCUSSION

### Issue 1: Whether appellant is entitled to the refund claimed for the 2018 tax year.

If a taxpayer has an overpayment of an income tax liability, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance may be refunded to the taxpayer. (R&TC, §§ 19002, 19301). The taxpayer has the burden of proof in showing entitlement to a credit or refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) A taxpayer's untimely filing of a claim for refund for any reason bars the refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations must be strictly construed. (*Ibid.*) OTA can only grant relief if there is an exception to the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant does not dispute that appellant untimely filed the claim for refund for the 2018 tax year. Thus, OTA need not consider whether the claim for refund was timely, but will consider whether any exception applies that would allow appellant to claim the refund. Appellant makes two arguments to support appellant's position that the claim for refund should nevertheless be allowed:<sup>2</sup> that the overpayment from the 2018 tax year may be applied as an offset against a deficiency in tax for a later tax year under R&TC section 19314; and that appellant had reasonable cause for untimely filing the refund claim.<sup>3</sup>

R&TC section 19314(a)(1) allows a taxpayer to transfer an overpayment to another year for use as an offset against a deficiency in tax, but only if the taxpayer transfers an item of income or deduction (or both) to or from another year and the overpayment was due to the transfer of that item. The offset against income must occur within seven years of the due date of the return from which the overpayment is determined. (R&TC, § 19314(b).) However, R&TC section 19314(c) expressly prohibits a refund for the overpayment that is used as an offset against a deficiency for another year where the claim for refund is filed after the expiration of the

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<sup>2</sup> Appellant also requests an installment plan to pay for any remaining liabilities. However, OTA lacks authority to offer appellant an installment plan. (R&TC, § 19007.) Also, appellant has claimed refunds for the 2018 and 2019 tax years and, therefore, does not have a tax due. Thus, this argument is not relevant and need not be addressed.

<sup>3</sup> Appellant does not indicate whether the arguments and supporting facts apply to the 2018 or 2019 tax year; thus, OTA shall assume that the arguments and facts apply to both years.

limitations period set out in R&TC section 19306. (See *Appeal of Matthiessen*, 85-SBE-077 1985 WL 15856.)<sup>4</sup>

As discussed above, appellant concedes that the limitations period expired for the 2018 tax year prior to the time that appellant filed the refund claim. Therefore, appellant is precluded from applying the overpayment for the 2018 tax year as an offset against any deficiency for any other tax year under R&TC section 19314(a) or (c).

Appellant argues that appellant had reasonable cause for failing to timely file the claim for the 2018 tax year. Specifically, appellant argues that the delays in filing the claim for refund for the 2018 tax year were due to the unresponsiveness of appellant's return preparer, and the negligence of the accounting firm that appellant used during the 2023 year. Appellant also argues that the financial and operational challenges faced during the COVID-19 pandemic further delayed appellant's ability to secure professional assistance as appellant's business was severely impacted. Appellant points to appellant's payment of taxes for the 2018 tax year as an indication of appellant's good-faith efforts to resolve appellant's tax matters. Appellant provides documents including screenshots and emails of what appears to be correspondence with appellant's prior tax advisor, and appellant's bank records reflecting respondent's notice of levy of appellant's funds.

Reasonable cause is not a basis for suspending the statute of limitations period. (*Appeal of Benemi Partners, L.P.*, *supra*.) Therefore, appellant's arguments regarding reasonable cause do not constitute an exception that would allow appellant to claim the refund.

Appellant's failure to file a claim within the period of limitations, for any reason, bars appellant from later receiving a refund. (*Appeal of Estate of Gillespie*, *supra*.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, *supra*.) For these reasons, appellant's claim for credit or refund for the 2018 tax year is barred under the statute of limitations described in R&TC section 19306(a).

Issue 2: Whether appellant is entitled to the refund claimed for the 2019 tax year.

The law stated above for the 2018 tax year is applicable to the 2019 tax year. Appellant does not dispute that appellant untimely filed the claim for refund for the 2019 tax year. Thus, OTA need not consider whether the claim for refund was timely, but will consider whether any exception to the statute of limitations applies for the 2019 tax year.

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<sup>4</sup> *Appeal of Matthiessen*, *supra*, addresses R&TC section 19053.9, which was amended and renumbered as R&TC section 19314, operative January 1, 1994.

Appellant makes the same two arguments for the 2019 tax year that were made for the 2018 tax year: that the overpayment from the 2019 tax year (for which appellant claimed a refund) may be applied as an offset against a deficiency in tax for a later tax year under R&TC section 19314; and that appellant had reasonable cause for untimely filing the refund claim.<sup>5</sup>

Appellant indicated on the 2019 Return that appellant wanted to apply the refundable EITC credits of \$154 (comprised of an EITC of \$147 claimed on the 2019 Return plus the \$7 EITC that appellant claimed on the 2018 Return and wanted applied to the 2019 Return) to appellant's 2020 tax year. However, appellant has not demonstrated that appellant actually transferred any income or deduction from the 2019 tax year to appellant's tax return for any other year.

In addition, an offset under R&TC section 19314 is not allowed once the limitations period expires under R&TC section 19306. (R&TC, § 19314(c); see *Appeal of Matthiessen, supra.*) Appellant concedes that the limitations period expired for the 2019 tax year prior to the time that appellant filed the refund claim. Therefore, appellant is precluded from applying the overpayment for the 2019 tax year (that is, the excess refundable credits) as an offset against any deficiency for any other tax year under R&TC section 19314(a) or (c).

Reasonable cause is not a basis for suspending the statute of limitations period. (*Appeal of Benemi Partners, L.P., supra.*) Appellant's failure to file a claim within the period of limitations, for any reason, bars appellant from later receiving a refund. (*Appeal of Estate of Gillespie, supra.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) For these reasons, appellant's claim for credit or refund for the 2019 tax year is barred under the statute of limitations described in R&TC section 19306(a).

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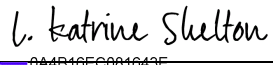
<sup>5</sup> Appellant does not indicate whether the arguments and supporting facts apply to the 2018 or 2019 tax year; thus, OTA shall assume that the arguments and facts apply to both years.

HOLDINGS


1. Appellant is not entitled to the refund claimed for the 2018 tax year.
2. Appellant is not entitled to the refund claimed for the 2019 tax year.

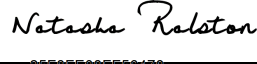
DISPOSITION

Respondent's action is sustained.

Signed by:  
  
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 L. Katrine Shelton  
 Administrative Law Judge

We concur:

Signed by:  
  
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 Veronica I. Long  
 Administrative Law Judge

Signed by:  
  
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 Natasha Ralston  
 Administrative Law Judge

Date Issued: 2/24/2026