OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

ROBERT PERRUSO 1993 RVOC TR

OTA Case No. 240917561

OPINION

Representing the Parties:

For Appellant: Kerry A. Wright, Trustee

For Respondent: Vicki M. Leclerc, Program Specialist

For Office of Tax Appeals: Mai Tran, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Robert Perruso 1993 RVOC TR (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $103,230 for the 2019 taxable 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

Is appellant's claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant untimely filed a 2019 California fiduciary income tax return on June 14, 2024. Appellant reported zero total tax and claimed a real estate withholding credit of $103,230, paid on December 31, 2019. Appellant claimed a refund of $103,230.
2. FTB accepted the return as filed and treated it as a claim for refund. FTB notified appellant that the refund was denied due to the expiration of the statute of limitations.
3. Appellant then filed this timely appeal.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed unless the claim is filed within the later of the following dates: (1) four years from the date the return is filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date of the return, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. By statute, California personal income tax returns filed on a calendar year basis are originally due (without regard to any extension of time to file) on or before April 15th following the close of the calendar year. (R&TC, § 18566.) The taxpayer has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Since appellant's return was not filed within an extension of time to file, the first four-year statute of limitations is inapplicable. The second four-year statute of limitations expired on April 15, 2024, which is four years from April 15, 2020, the statutory original due date of appellant's 2019 return. Appellant's withholding credit made before the due date of the return is generally deemed paid on the original due date of the return, and therefore the one-year statute of limitations expired on April 15, 2021. (R&TC, §§ 19002(c)(1) & (d)(2), 18566, 19306(a).) Thus, under R&TC section 19306(a), the later of these dates is April 15, 2024, and is the date the second four-year statute of limitations expired. Accordingly, because appellant filed the claim for refund on June 14, 2024, which is several months after April 15, 2024, it is untimely.

On appeal, appellant disagrees and argues that the claim for refund is timely because FTB postponed the original filing deadline for 2019 California income tax returns from April 15, 2020, to July 15, 2020, due to the COVID-19 pandemic. Appellant asserts that the postponement means the filing deadline for determining the statute of limitations should be four years from the postponed due date of July 15, 2020, rather than four years from the original statutory due date of April 15, 2020. Because appellant filed the claim for refund on June 14, 2024, appellant asserts the claim is timely since it was filed on or before July 15, 2024.

R&TC section 18572(b), which incorporates Internal Revenue Code (IRC) section 7508A, provides FTB with the authority to postpone certain tax-related deadlines. Treasury Regulation section 301.7508A-1(b)(4) states that "[t]he postponement of the deadline of a tax-related act [under IRC section 7508A] does not extend the due date for the act but merely allows the [taxing agency] to disregard a time period of up to one year for performance of the act. To 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."[1]

Appellant correctly points out that FTB postponed the original due date of 2019 California income tax returns to July 15, 2020, because of the COVID-19 pandemic.[2] However, Treasury Regulation section 301.7508A-1(b)(4) provides that postponement of the original due date to July 15, 2020, does not change the original statutory due date of April 15, 2020, on which the statute of limitations in R&TC section 19306(a) is based. (*Appeal of Nguyen*, 2025-OTA-333P.) Thus, four years from the original "due date" of the return remains April 15, 2024. Appellant's claim for refund filed on June 14, 2024, is therefore barred by the statute of limitations.

Appellant also argues that OTA should apply California Rule of Court, Emergency Rules Related to COVID-19, Emergency Rule (Emergency Rule) 9 to toll the statute of limitations to October 1, 2020.[3] The California Rules of Court set forth the rules and requirements for California Courts. However, OTA is not a court and has no jurisdiction to provide a remedy to appellant based on Emergency Rule 9. (See Gov. Code, § 15672(b) [providing that OTA shall not be construed to be, or to be conducted by, a tax court].) Rather, OTA is an administrative agency, and its jurisdiction concerns appeals from actions by FTB and the California Department of Tax and Fee Administration. (See Cal. Code Regs., tit. 18, § 30103.) Thus, OTA lacks jurisdiction to extend the statute of limitations based on Emergency Rule 9.

Appellant further argues that equity requires that the statute of limitations not be applied or enforced as it would cause a harsh result. However, the language of the statute of limitations is strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, *supra*.) Other than a narrow exception not

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[1] When applying the IRC for California personal income tax purposes, federal Treasury Regulations apply to the extent they do not conflict with California personal income tax laws and regulations. (R&TC, § 17024.5(d).)

[2] See *State Postpones Tax Deadlines Until July 15 Due to COVID-19 Pandemic*, news release (Mar. 18, 2020) https://web.archive.org/web/20200320204233/www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html.

[3] California Rules of Court Appendix I: Emergency Rules Related to COVID-19 sets forth various rules of court in consideration of the COVID-19 pandemic. Emergency Rule 9(a) states: "Notwithstanding any other law, the statute of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." Emergency Rule 9(b) states: "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020." (See https://www.courts.ca.gov/documents/appendix_I.pdf.)

relevant here,[4] a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid*.) The occasionally harsh result from fixed deadlines is redeemed by the administrative clarity imparted. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Ibid*.)

HOLDING

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

DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Signed by:
CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

Date Issued: 3/23/2026

[4] R&TC section 19316 provides a narrow exception for suspending the statute of limitations when an *individual* taxpayer is deemed "financially disabled." A financially disabled taxpayer is unable to manage personal financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1), italics added.)