2026-OTA-354
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

N. MILLER

OTA Case No. 250823041

OPINION

Representing the Parties:

For Appellant: N. Miller

For Respondent: John Ly, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Miller (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $6,386.55 for the 2018 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 filed an untimely 2018 California Resident Income Tax Return on December 13, 2019, reporting total tax of $7,310, California income tax withholding of $6,452, and tax due of $858.
2. Due to the untimely return, FTB imposed a late-filing penalty, plus applicable interest, and issued appellant a Notice of Tax Return Change.
3. The parties entered into an installment agreement, and appellant made payments totaling $1,174.64 between March 20, 2020, and August 20, 2020.
4. Appellant called FTB on June 13, 2025. FTB's records indicate that the call mainly concerned matters involving the 2020 and 2023 taxable years.

5. Appellant filed an untimely amended 2018 return on June 15, 2025, reporting total tax of $1,206, California income tax withholding of $6,452, and an overpayment of $5,246. On California Schedule X, California Explanation of Amended Return Changes, appellant requested a total refund of $6,104, citing an error on the original return; namely, additional deductions that were not previously claimed.
6. FTB processed appellant's amended return, abated the late-filing penalty, and computed an overpayment of $6,386.55. FTB treated the amended return as a claim for refund.
7. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.
8. This timely appeal followed.

DISCUSSION

Appellant does not dispute that the refund claim filed on June 15, 2025, was untimely.[1] Appellant asserts that an FTB employee gave authorization to file the amended 2018 return as a claim for refund, and was later denied due to the statute of limitations expiring.[2] Appellant appears to suggest that reliance on verbal instructions from an FTB employee should toll or waive the statute of limitations for this refund claim.

Ignorance of the law does not excuse the late filing of claims for refund. (*Appeal of Braeunig* (70-SBE-004) 1970 WL 2439.) In the *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P, OTA stated that there is no reasonable cause or equitable basis for suspending the statute of limitations for refund claims and cited *U.S. v. Brockamp* (1997) 519 U.S. 347 for its holding that the federal legislature had no intent to apply equitable tolling to invalidate or toll the federal statute of limitations for refund claims. Federal courts have held that the doctrine of equitable estoppel cannot be used to extend or toll the time to file a tax refund claim. (See *Danoff v. U.S.* (C.D.Cal. 2004) 324 F.Supp.2d 1086, 1099, affd. (9th Cir. 2005) 135 Fed.Appx. 950.) Furthermore, the State Board of Equalization, OTA's predecessor, held that the doctrine of equitable estoppel cannot "be invoked against the state except where grave injustice would otherwise result." (*Appeal of Wheat* (83-SBE-150) 1983 WL 15535.) "In an appropriate case, a government agency may be estopped to rely on the statute of limitations in denying a claim where the agency's erroneous advice has induced the claimant to delay filing

[1] California law generally requires a taxpayer to file his or her refund claim by 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).)

[2] Appellant is likely referring to the phone call made to FTB on June 13, 2025, regarding the 2020 taxable year.

until after the limitations period has expired. (*Ibid*.) The burden of proving estoppel is on the party asserting it." (*Ibid*, citations omitted.)

OTA holds that the allegedly erroneous instruction by an FTB employee informing appellant of the right to file an amended return does not waive the statute of limitations nor create an estoppel against FTB. FTB's records reflect that the call mainly concerned matters involving the 2020 and 2023 taxable years, rather than the 2018 taxable year at issue here. Moreover, any instruction given to appellant on June 13, 2025, was communicated well after the refund claim deadline which expired on April 15, 2023, and could not have induced appellant to delay filing an otherwise timely claim. Therefore, appellant has not met the burden of proof to show entitlement to the claim for refund.

HOLDING

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

DISPOSITION

OTA sustains FTB's action denying appellant's claim for refund.

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
L. Katrine Shelton
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L. Katrine Shelton
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 5/13/2026