OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. ARDIRE**	OTA Case No. 250118486

OPINION

Representing the Parties:

For Appellant: R. Ardire

For Respondent: Rosemary Villasenor, Senior Legal Analyst

For Office of Tax Appeals: Michelle Huh, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Ardire (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $4,210 for the 2019 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. On May 21, 2020, appellant timely filed a 2019 California resident income tax return, requesting a refund of $1,781. FTB issued the refund to appellant.
2. On February 12, 2024, FTB informed appellant that she may have additional nonwage withholding credits of $4,209.62, which were not claimed on the 2019 tax return.
3. On August 9, 2024, FTB records show receipt of appellant's amended 2019 California resident income tax return, reporting an overpayment of $5,990.
4. FTB processed the amended return, calculated a reduced overpayment of $4,210, and treated the amended return as a claim for refund. FTB denied appellant's claim for

refund because it determined that appellant's amended return had been filed outside the period prescribed for making a refund claim.

5. This timely appeal followed.
6. On appeal, appellant provides a copy of an envelope with a third-party or private postage meter stamp date of May 15, 2024.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306(a), which provides 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 pursuant to an extension of time to file; (2) four years from the due date for filing the return (determined without regard to any extension of time to file); or (3) one year from the date of the overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a); *Appeal of Estate of Gillespie,* 2018-OTA-052P.) Tax withholdings are deemed paid on the due date of the return. (R&TC, § 19002(c)(1).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.)

Appellant filed an original return within an extension of time to file; therefore, the first four-year statute of limitations period applies.[1] The four-year statute of limitations period expired on May 21, 2024, four years from when appellant filed the original return. The one-year statute of limitations period expired on April 15, 2020, which is one year from when appellant's California income tax withholdings were deemed paid. Therefore, appellant must have filed an amended return on or before May 21, 2024, for the claim for refund to be considered timely.

Appellant asserts that an amended return was filed within the statute of limitations period. After having been notified by FTB about the additional unclaimed withholding credits, appellant asserts to having prepared and mailed the amended return on May 15, 2024. In support of the contention, appellant presents a copy of an envelope addressed to respondent with paid postage for first class mail service and a third-party postmark dated May 15, 2024.

[1] California provides taxpayers with an automatic six-month extension to file their tax returns. (Cal. Code Regs., tit. 18, § 18567(a).) For the 2019 tax year, FTB postponed the original due date for personal income tax returns to July 15, 2020, due to the COVID-19 pandemic. However, the postponement of the deadline of a tax-related act does not extend the due date for the act, but merely allows a government agency to disregard a period of up to one year for performance of the act. (Treas. Reg. § 301.7508A-1(b)(4); see also *Appeal of Nguyen*, 2025-OTA-333P, and *Appeal of Bannon*, 2023-OTA-096P.)

To prove that a paper return was timely mailed, a taxpayer must provide evidence that the return was timely mailed, and thus timely filed with FTB. (Gov. Code, § 11003; Internal Revenue Code (IRC), § 7502; Treas. Reg. § 301.7502-1(c)(iii); Cal. Code Regs., tit. 18, § 30219(a).) Generally, a return is deemed to be filed on the date of the postmark stamped on the envelope, even if it is received after the last day of the period prescribed for filing the return. (Gov. Code, § 11003; R&TC, § 21027; IRC, § 7502; Treas. Reg. § 301.7502-1(a).) However, if the postmark on the envelope is made other than by the U.S. Postal Service, the postmark must have a legible date on or before the last date prescribed for filing the refund claim and the refund claim must have been received by FTB no later than the time when a document contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it was postmarked at the same point of origin by the U.S. Postal Service. (Treas. Reg. § 301.7502-1(c)(1)(iii)(B)(1).) If the return arrives after such period, then the postmark may be disregarded unless the taxpayer can establish: (1) that the document was actually deposited in the U.S. mail on or before the last day of the prescribed period; (2) that the delay in receiving the document was due to a delay in the transmission of mail; and (3) the cause of the delay. (Treas. Reg. § 301.7502-1(c)(1)(iii)(B)(2).)

Appellant’s envelope is postmarked May 15, 2024, by a private company. However, FTB has no record of receiving appellant’s amended return until August 9, 2024, almost three months after the date of the postmark and well after when a document sent by first class mail would normally have been received. Other than appellant’s own statements and a copy of the third-party postmarked envelope, appellant has not provided evidence to establish what might have caused such an unusual delay in delivery. Without additional evidence that shows the amended return was actually mailed on or before the expiration of the statute of limitations, appellant’s third-party postmarked envelope and allegations of timely filing does not overcome FTB’s official government records indicating that the claim for refund was not timely filed. (See *Appeal of La Salle Hotel Company* (66-SBE-071) 1966 WL 1412.) Thus, absent additional evidence, appellant’s return is not deemed to be filed on May 15, 2024, and the refund claim is barred by the statute of limitations.

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.

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

Date Issued: 5/14/2026