

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 250923144
S. MCGAVRAN AND	)	
H. MCGAVRAN	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellants:	S. McGavran and H. McGavran
For Respondent:	Blake Cunningham, Specialist
For Office of Tax Appeals:	Amber Poon, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. McGavran and H. McGavran (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,806.05 for the 2019 tax year.

Appellants 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 appellants are entitled to a refund or credit of the overpayment for the 2019 tax year.

FACTUAL FINDINGS

1. FTB received information indicating that appellants received sufficient income to require filing a tax return for the 2019 tax year. FTB issued appellant S. McGavran a Demand for Tax Return. Appellants failed to respond.
2. FTB issued appellant S. McGavran a Notice of Proposed Assessment proposing tax, a late filing penalty, a demand penalty, accrued interest, and a filing enforcement fee, totaling \$7,354. Appellants failed to respond and the assessment became due and payable.

3. FTB initiated collection action. FTB received three payments between April 19, 2023, and September 20, 2023, totaling \$7,912.28.
4. On April 15, 2025, appellants untimely filed a 2019 California Resident Income Tax Return reporting total tax of \$3,508 and withholding credits of \$3,619, resulting in an overpayment of \$111, for which appellants requested a refund.¹
5. FTB accepted the return and treated it as a claim for refund of \$6,806.05.² FTB denied the claim for refund because it determined the claim was untimely.
6. Appellants timely filed this appeal.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that no credit or refund may 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 a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. For purposes of R&TC section 19306, withholding credits are treated as paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1).) The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs, tit. 18, § 30219(a) (b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellants assert that they first filed a 2019 tax return claiming a refund on July 5, 2023. Appellants argue that the April 15, 2025 tax return was a duplicate of the July 5, 2023 tax return, which was filed before the statute of limitations expired. Therefore, appellants argue that their claim for refund was timely and that they are entitled to a refund.

A tax return or refund claim which is sent to FTB via U.S. mail or through a bona fide commercial delivery service and properly addressed with postage prepaid, is deemed filed on (1) the postmark date stamped on the envelope containing the claim,³ or (2) the date it was mailed if proof satisfactory to FTB establishes that the mailing occurred on an earlier date. (Gov. Code, § 11003.) An electronically filed tax refund or claim for refund is deemed filed on the date it is successfully transmitted to FTB. (See *Appeal of Fisher*, 2022-OTA-337P.) Despite

¹ Appellants filed a duplicate 2019 return on May 27, 2025.

² FTB removed the late filing penalty and reduced the demand penalty. The overpayment amount of \$6,806.05 reflects appellants' overpayment of \$111 plus payments of \$7,912.28, less the demand penalty of \$877, collection cost fee of \$316, and interest of \$24.23.

³ For documents sent via U.S. certified mail, the postmark date on the sender's receipt is treated as the postmark date. (R&TC, § 21027(b).)

their assertion, appellants have not submitted any evidence that they filed a tax return on July 5, 2023, such as a certified mail receipt or electronic filing confirmation. (See *Appeal of Fisher, supra.*) Therefore, appellants have failed to establish that they filed a claim for refund on July 5, 2023.

Because appellants failed to timely file a return, the four-year statute of limitations to file a claim for refund began to run on the return's original due date, April 15, 2020, and expired four years later, on April 15, 2024. Accordingly, appellants' April 15, 2025 claim for refund is barred by the four-year statute of limitations. Moreover, for appellants' withholding credits, which are deemed paid on April 15, 2020, the one-year statute of limitations expired on April 15, 2021. Similarly, for payments made between April 19, 2023, and September 20, 2023, the one-year statute of limitations expired one year after those payments were made. As appellants filed the claim for refund on April 15, 2025, any payments made before April 15, 2024, are barred by the one-year statute of limitations. Therefore, appellants' claim for refund is barred by the one-year statute of limitations.

Finally, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The statute of limitations for filing a claim for refund must be strictly construed; a taxpayer's untimely filing of a claim bars a refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)⁴ Although fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Although appellants may have an overpayment for the 2019 tax year, OTA lacks the authority to abrogate the statute of limitations and grant an untimely refund claim. (*Appeal of Estate of Gillespie, supra.*)

⁴ Though inapplicable here, there is a narrow exception that extends the time for filing a claim a claim for refund where a taxpayer is financially disabled due to a medically determinable physical or mental impairment. (See R&TC, § 19136.)

HOLDING

Appellants are not entitled to a refund or credit of the overpayment for the 2019 tax year.

DISPOSITION

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

DocuSigned by:

Steven Kim

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Steven Kim

Administrative Law Judge

We concur:

Signed by:

Josh Lambert

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Josh Lambert

Administrative Law Judge

DocuSigned by:

Josh Aldrich

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Josh Aldrich

Administrative Law Judge

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