

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 251023570
J. PLEMONS AND	)	
T. PLEMONS	)	
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	)	
	)	

OPINION

Representing the Parties:

For Appellants:	David M. Slosberg, Attorney
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For Respondent:	Anthony S. Epolite, Attorney
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For Office of Tax Appeals:	Quinn Chappelle, Graduate Student Assistant
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S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Plemons and T. Plemons (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$9,475 for the 2020 tax year.

Appellants 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 appellants' claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. On May 4, 2021, appellants jointly filed a 2020 California Resident Income Tax Return (return) within the extension of time to file, reporting estimated tax and other payments of \$12,000, withholdings of \$7,096 and an overpayment and refund of \$8,052, which appellants requested to be applied to the 2021 estimated tax. FTB accepted the return as filed and applied the overpayment as a credit to the 2021 tax year.
2. On July 18, 2024, FTB sent appellant T. Plemons an Unclaimed Nonwage Withholding Credits letter informing her that she may be entitled to estimated nonwage withholding credits of \$9,474.72. The letter instructed appellant T. Plemons to file an amended return to claim the credits and informed her of the statute of limitations to do so.

3. On May 15, 2025, appellants jointly filed an amended 2020 return, increasing withholdings by \$9,475 and requesting a refund of \$9,475 on Schedule X, California Explanation of Amended Return Changes.
4. FTB accepted appellants' amended return as filed and treated it as a claim for refund.
5. FTB subsequently issued appellants a Statute of Limitations notice denying appellants' claim for refund of \$9,475 due to the expiration of the statute of limitations.
6. Appellants filed this timely appeal.

DISCUSSION

The statute of limitations to file a claim for refund is established in R&TC section 19306. R&TC section 19306 states that no credit or refund is 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 for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Returns based on the calendar year must be filed on April 15 following the end of that calendar year. (R&TC § 18566.) Taxes deducted and withheld are deemed paid on the return's due date. (R&TC § 19002(c)(1).) Taxpayers bear the burden of proof to establish they are entitled to a refund and that their claim for refund is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Here, the first four-year statute of limitations applies because appellants filed their original return on May 4, 2021, within the extension of time to file. (See R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) The first four-year statute of limitations period expired on May 4, 2025, four years from May 4, 2021, when appellants timely filed their original return for the 2020 tax year. Appellants filed their 2020 amended return, treated by FTB as a claim for refund, on May 15, 2025, after the expiration of the four-year statute of limitations. The claim for refund is therefore barred under the four-year statute of limitations.

Under the one-year statute of limitations, appellants may claim a refund of any payments made from one year of the date of the claim for refund. Here, appellants claimed a refund of withholding credits, which are deemed paid on the due date of the return, April 15, 2021. (R&TC, §§ 19002(c)(1), 18566.) The one-year statute of limitations expired one year later, on April 15, 2022. Appellants' May 15, 2025 claim for refund is therefore untimely under the one-year statute of limitations.

Appellants assert that they prepared their claim for refund on May 12, 2025, and mailed it on May 13, 2025.¹ Appellants argue that due to COVID-19, the due date for filing individual 2020 tax year returns was May 15, 2021, and thus their claim was timely because it was filed four years later, on May 15, 2025.

Appellants correctly point out that due to COVID-19, FTB postponed the original due date for individual taxpayers to file a 2020 tax return from April 15, 2021, to May 17, 2021. (*Appeal of Bannon*, 2023-OTA-096P.) FTB's authority to grant state of emergency postponements for tax-related acts is pursuant to R&TC section 18572(b), which adopts Internal Revenue Code (IRC) section 7508A, as modified for emergencies declared by the Governor of California. When applying the IRC for purposes of California personal income tax, IRS Treasury Regulations shall be applicable to the extent that they do not conflict with California personal income tax code sections or regulations. (R&TC, § 17024.5.) Treasury Regulation section 301.7508A-1(b)(3) provides that a postponement under IRC section 7508A runs concurrently with extensions of time to file and pay. Treasury Regulation section 301.7508A-1(b)(4) provides that "[t]o 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."

Thus, FTB's state of emergency postponement of the due date to May 17, 2021, did not change the original due date of April 15, 2021, upon which the four-year statute of limitations for refund claims is based. As stated above, because appellants filed their original return on May 4, 2021, within the extension period, the statute of limitations expired four years later, on May 4, 2025. Appellants filed their claim for refund on May 15, 2025, after the expiration of the statute of limitations. Based upon the foregoing, appellants claim is barred under the statute of limitations.

¹ OTA notes that FTB received appellants' claim for refund for the 2020 tax year on May 15, 2025. Generally, a document filed with FTB is considered filed on the date the document is received by FTB. (See *U.S. v. Lombardo* (1916) 241 U.S. 73, 76-77 [documents filed with the government are considered filed when delivered and received by the proper agency or official].) To prove that a paper return was filed on a date different from the date indicated by FTB's records, the taxpayer must provide evidence, such as a registered or certified mail receipt, showing that the return was timely mailed, and thus timely filed, with FTB. (Gov. Code, § 11003; R&TC, § 21027; *Appeal of Sotelo*, 2025-OTA-035P.) The record here does not contain sufficient evidence to establish that appellants filed their claim on a date different from the date indicated by FTB's records. (See *Appeal of Fisher*, 2022-OTA-337P.) Regardless, appellant's asserted date of filing, May 13, 2025, is untimely under the statute of limitations.

HOLDING

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

DISPOSITION

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

Signed by:



Seth Elsom
Hearing Officer

I concur:

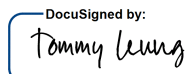
Signed by:



Veronica I. Long
Administrative Law Judge

T. LEUNG, Administrative Law Judge, concurring:

I agree with only the outcome of this appeal. (See R&TC, §§ 19306, 18567(a); *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

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Tommy Leung
Administrative Law Judge

Date Issued: 7/23/2026