

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21118974
D. COLLINS)
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OPINION

Representing the Parties:

For Appellant: D. Collins
For Respondent: Joel Smith, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Collins (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund in the amount of \$1,206.47¹ for the 2016 taxable year.

Because appellant waived his right to an oral hearing, this matter is being decided based on the written record.

ISSUE

Whether appellant’s claim for refund is timely.

FACTUAL FINDINGS

1. Appellant did not file his 2016 California personal income tax return (Form 540) until August 30, 2021, which respondent treated as a refund claim. Respondent denied the refund for being untimely.
2. After receiving information that appellant earned sufficient income to file a 2016 Form 540, respondent sent him a Notice of Proposed Assessment (NPA) dated July 2, 2018, imposing \$881.00 for tax and \$220.25 for a late filing penalty, plus interest.

¹ Respondent notes it made an erroneous write-off that reduces the claim amount, but since the assertion does not impact the outcome of this appeal, we will address it no further.

3. Appellant remitted \$1,187.75 on June 15, 2019, to respondent after the NPA became final and collection action was initiated.

DISCUSSION

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 original due date for filing a return for the year at issue (determined without regard to any extension of time to file),² or (3) one year from the date of overpayment.³ (R&TC, § 19306.) In this appeal, appellant did not file his 2016 Form 540 until August 30, 2021, which is also deemed to be the date of his refund claim; as such, it is clear that his claim is untimely.

Appellant does not dispute that his refund claim was filed late; instead, he contends that due to Covid-19, he could not retain a CPA to help him with his complex return before the filing deadline expired. However, while the consequences of fixed deadlines may be harsh, the occasional harshness is redeemed by the clarity they provide. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) Moreover, the law does not provide for the waiver of the statutory period based on reasonable cause. 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. (*Appeal of Hammerman* (83-SBE-260) 1983 WL 15631.) Thus, since the refund was filed late, the law prohibits us from granting it.

² As relevant here, for Covid-19 purposes, the four-year deadline for filing refund claims was postponed until May 17, 2021, for those claims due by April 15, 2021.

³ As relevant here, for Covid-19 purposes, the one-year deadline for filing refund claims was extended to July 15, 2020, for those claims due by June 15, 2020. (See FTB Notice 2020-02, March 30, 2020.)

HOLDING

Appellant’s claim for refund is untimely.

DISPOSITION


Respondent’s action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Josh Lambert
Administrative Law Judge

Date Issued: 6/13/2022