

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22019451
)
D. R. BRITT AND)
D. C. BRITT)
)
)

OPINION

Representing the Parties:

For Appellants: D. C. Britt, Taxpayer
 For Respondent: AnaMarija Antic-Jezildzic, Specialist

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. R. Britt and D. C. Britt (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants' claim for refund of \$1.00 or more¹ for the 2016 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived their rights to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Was appellants' refund claim for the 2016 taxable year timely?

FACTUAL FINDINGS

1. Appellants did not file their 2016 California personal income tax return (Form 540) on time. In 2018, respondent issued a Demand for Tax Return to appellants, followed by a Notice of Proposed Assessment, which went final.

¹ Appellants listed an amount at issue of \$4,213 (approximate total of \$2,440.71 + \$1,448.34 + \$334.00 amounts discussed below) and respondent listed an amount at issue of \$1,351.39 (\$2,440.71 less penalties, fees, and interest of \$1,089.32). Appellants presented no arguments regarding the appropriateness of the penalties, fees, and interest assessed by respondent and therefore these items will be discussed no further.

2. On October 8, 2018, appellants remitted \$334 for payment of their 2016 taxes.
3. On March 28, 2019, respondent applied appellants' 2018 taxable year overpayment of \$1,349.52 to their 2016 balance due. On April 23, 2020, respondent applied appellants' 2019 taxable year overpayment of \$1,091.19 to their 2016 balance due. These two transfers total \$2,440.71.
4. Appellants subsequently filed their 2016 Form 540 on October 7, 2021 (which respondent treated as a claim for refund), reflecting tax due of \$334.
5. Through collection activities, respondent collected \$724.17 on September 29, 2021, and \$724.17 on October 13, 2021, for a total of \$1,448.34. Respondent redirected these payments to outstanding liabilities for appellants' 2013 tax year account and to the IRS, as provided by law.

DISCUSSION

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Amounts withheld from wages are deemed paid on the original due date of the Form 540. (See R&TC, § 19002(c).) 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); or (3) one year from the date of overpayment. (R&TC, § 19306.)

In this appeal, appellants did not file their 2016 Form 540, which was due on April 18, 2017, until October 7, 2021, which is also the date of their refund claim. As such, it is clear that appellants' refund claim for the \$2,440.71, which is comprised of the 2018 and 2019 overpayment transfers, is untimely because the claim was made well beyond the four-year filing (which expired on May 17, 2021 (due to Covid-19)) and one-year payment (which expired for payments made before October 7, 2020) deadlines.² While the consequences of fixed deadlines may be harsh, the occasional harshness is redeemed by the clarity they provide. (*Prussner v.*

² The parties raise in their briefing amounts paid or collected pertaining to tax years other than 2016. However, because this appeal concerns only the 2016 taxable year, there is no jurisdiction to decide any other taxable year.

U.S. (7th Cir. 1990) 896 F.2d 218, 222-223; Appeal of Estate of Gillespie, 2018-OTA-052P.)

Appellants argue that they filed their 2016 Form 540 in 2018, but were not able to substantiate that. Appellants also contend that they remitted payments totaling \$1,448.34 on September 29, 2021, and October 13, 2021, which are not time-barred. However, this amount was redirected pursuant to statute and applied to an outstanding IRS balance and to appellants' outstanding 2013 balance due with respondent. Since these amounts were credited to appellants' other liabilities, they were no longer available for refund. (See R&TC, § 19301.) Finally, appellants' 2018 \$334 payment was applied to the tax amount due on their 2016 Form 540.


In addition, the law does not allow for a waiver of the statute of limitations 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 claim was filed late as to the amounts remaining at issue, the law prohibits the granting of it.

HOLDING

Appellants' 2016 refund claim was not filed on time.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 8/18/2022