

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. SILVA

) OTA Case No. 21119122
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OPINION

Representing the Parties:

For Appellant: J. Silva

For Respondent: Joel M. Smith, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Silva (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$1,580 for the 2014 tax year and \$1,882 for the 2015 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant timely filed a claim for refund for the 2014 or 2015 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2014 tax return on April 3, 2015. Appellant reported wages of \$67,902, total tax of \$901, and withholdings of \$2,748. Appellant reported an overpayment of \$1,847, which respondent refunded to appellant.
2. Appellant timely filed a 2015 tax return on February 28, 2016. Appellant reported wages of \$73,056, total tax of \$1,223, and withholdings of \$3,210. Appellant reported an overpayment of \$1,987, which respondent refunded to appellant.

3. On April 12, 2021, appellant filed amended tax returns for 2014 and 2015. Each amended return reported zero taxable income. Appellant requested refunds of \$1,580 for the 2014 tax year and \$1,882 for the 2015 tax year.
4. Respondent treated the amended returns as claims for refund and denied refunds for the overpayment of \$902¹ for the 2014 tax year and \$1,223 for the 2015 tax year.
5. This timely appeal followed. On appeal, appellant seeks a refund of \$1,580 plus interest for the 2014 tax year and \$1,882 plus interest for the 2015 tax year.

DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer has the burden of proof to show that he or she is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

R&TC section 19306(a) provides, in part, 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 filed within the extended due date; (2) four years from the due date for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. For purposes of computing the statute of limitations on refund claims, amounts withheld are deemed to have been paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1).) The language of the statute of limitations is explicit and strictly construed. (*Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him or her from receiving the refund at a later date. (*Ibid.*)

On appeal, appellant seeks a refund of \$1,580 plus interest for the 2014 tax year and \$1,882 plus interest for the 2015 tax year. However, a review of appellant's 2014 and 2015 tax returns shows that respondent only collected from appellant \$902 (\$2,748 withheld - \$1,847 refunded) for the 2014 tax year and \$1,223 (\$3,210 withheld - \$1,987 refunded) for the 2015 tax

¹ There appears to be a \$1 difference between respondent's 2014 refund claim denial and appellant's original 2014 return due to the fact that respondent's records indicate appellant's withholdings for 2014 was \$1 more than what appellant reported on his 2014 return.

year. As such, this Opinion will only address whether appellant timely filed a refund claim for \$902 for the 2014 tax year and \$1,223 for the 2015 tax year.

Here, appellant filed an amended 2014 return, which respondent treated as a claim for refund. Because appellant timely filed the original 2014 return, appellant was required to file a refund claim no later than April 15, 2019, which is four years from the original due date of the return. Under the alternative one-year statute of limitations, appellant was required to file the refund claim no later than April 15, 2016, which is one year from the date appellant's withholdings for 2014 are deemed paid.

Appellant filed an amended 2015 return, which respondent treated as a claim for refund. Because appellant timely filed the original 2015 return, appellant was required to file a refund claim no later than April 15, 2020, which is four years from the original due date of the return. Under the alternative one-year statute of limitations, appellant was required to file the refund claim no later than April 15, 2017, which is one year from the date appellant's withholdings for 2015 are deemed paid.

Appellant did not submit the amended 2014 and 2015 returns until April 12, 2021, which is after the statutes of limitations for both tax years.

Appellant argues that respondent's denial of a claim for refund violates title 26 and title 28 of the United States Code (USC). Appellant asserts that he is not a taxpayer pursuant to title 26 USC section 3401(c), which defines "employee," and title 26 USC section 1402, which defines "net earnings from self-employment." Appellant also asserts that he timely filed his amended returns under title 28 of USC section 2501, which allows a claimant six years to file a claim over which the Court of Federal Claims has jurisdiction.

Appellant's arguments that his wages are not taxable, and other similar arguments, have consistently been rejected by the Office of Tax Appeals' (OTA's) predecessor, the Board of Equalization, and by OTA as frivolous arguments and without merit. (See, e.g., *Appeal of Balch*, 2018-OTA-159P; *Appeals of Wesley, et al.* (2005-SBE-002) 2005 WL 3106917.) As such, there is no need to discuss appellant's arguments further, because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417 [discussing the reason courts often decline to refute frivolous taxpayer arguments with "somber reasoning and copious citation of precedent"].)

Regarding appellant’s reference to title 28 USC section 2501, this federal law applies to the jurisdiction of the United States Court of Federal Claims, not OTA.

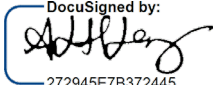
Based on the foregoing, because appellant did not timely file refund claims under the applicable statutes of limitations for either 2014 or 2015, appellant is barred from seeking a refund.

HOLDING

Appellant did not timely file a claim for refund for the 2014 or 2015 tax year.

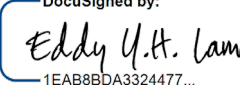
DISPOSITION

Respondent’s action denying appellant’s claims for refund is sustained.

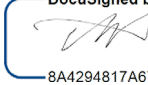
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Andrea L.H. Long
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 9/20/2022