

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
F. NEVAREZ

) OTA Case No. 22019584
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OPINION

Representing the Parties:

For Appellant: F. Nevarez

For Respondent: Eric R. Brown, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Nevarez (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,526.16 for the 2016 taxable year.

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

ISSUE

Was appellant’s refund claim for the 2016 taxable year timely?

FACTUAL FINDINGS

1. Appellant did not file his 2016 California personal income tax return (Form 540) on time. In 2018, respondent issued a Demand for Tax Return to appellant, followed by a Notice of Proposed Assessment, which went final.
2. Appellant entered into an installment agreement with respondent covering several open taxable years, including the 2016 taxable year. Pursuant to the installment agreement, appellant paid \$380 on October 12, 2021, which respondent initially applied toward his 2016 account. Appellant also had an October 19, 2021 transfer of \$74.13 from a 2020 overpayment, and an October 25, 2021 interest allowance of \$0.35. However, FTB

subsequently transferred all of these amounts and applied them to appellant's 2017 taxable year outstanding balance.

3. Appellant filed his 2016 Form 540 on October 15, 2021, reflecting (after tax withholdings) an overpayment of \$1,918, which he claimed as a refund.
4. After accepting appellant's 2016 Form 540 as filed, and accounting for credits and transfers to the 2017 account, respondent denied \$1,526.16 of appellant's refund claim for being untimely.

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).) An overpayment may be credited by respondent against any amount owed by the taxpayer, with the balance being refunded to the taxpayer. (R&TC, §§ 19301(a), 19108.) 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, appellant contends that he made a payment within the four-year statute of limitations, had an installment payment agreement with respondent which is still current, and made a payment a year ago. However, appellant did not file his 2016 Form 540, which was due on April 18, 2017, until October 15, 2021, which is also the date of his refund claim. As such, it is clear that appellant cannot satisfy the four-year statute of limitations, which (due to Covid-19) expired on May 17, 2021.¹ Moreover, any 2016 tax payments made prior to October 15, 2020, including appellant's withheld taxes,² are untimely because they were not made within one year

¹ <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.

² As mentioned above, withheld taxes are deemed paid on the original due date of appellant's 2016 Form 540 – i.e., April 18, 2017. (See R&TC, § 19002(c).)


of appellant’s refund claim.³ 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.)

HOLDING


Appellant’s refund claim for the 2016 taxable year was untimely.


DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

DocuSigned by:

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Keith T. Long
Administrative Law Judge

Date Issued: 8/29/2022

³ Additionally, while appellant’s tax payments of \$380 on October 12, 2021, and \$74.13 and \$0.35 on October 19 and 25, 2021, respectively, are apparently timely, those amounts were applied to appellant’s outstanding 2017 taxable year balance due by respondent, as permitted by law, rendering such amounts unavailable for refund. (See R&TC, §§ 19301(a); 19108.)