

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**F. STURDEFANT**

) OTA Case No. 22019447  
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**OPINION**

Representing the Parties:

For Appellant: F. Sturdefant

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Sturdefant (appellant) appeals an action by Franchise Tax Board (respondent) partially denying appellant’s claim for refund of \$6,391.44 for the 2009 taxable year.

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

**ISSUE**

Whether appellant’s 2009 refund claim was timely.

**FACTUAL FINDINGS**

1. When respondent received information that appellant had sufficient income to require the filing of a 2009 California personal income tax return (Form 540) but none had been filed, a Notice of Proposed Assessment (NPA) was issued in 2013. After receiving no response, the NPA went final, and respondent commenced collection action in 2015 to satisfy the balance due on appellant’s 2009 account.
2. Appellant did not file the 2009 Form 540 until July 15, 2021, reporting zero tax due.

3. Respondent treated appellant's 2009 Form 540 as a refund claim for \$6,391.44,<sup>1</sup> granting \$852.41 (plus \$11.88 interest), and denying \$5,527.15 because it was 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.) 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's 2009 Form 540 was due on April 15, 2010, and four years therefrom was April 15, 2014. Because appellant did not file the 2009 Form 540 until 2021, the four-year time period for filing the refund claim does not apply. Furthermore, because the 2009 Form 540 was filed on July 15, 2021, payments made prior to July 15, 2020, were also not refundable.

Appellant argues that the four-year statute of limitations should begin in 2017, when respondent commenced wage garnishments, and that the market crash of 2008 caused personal problems that resulted in the late filing of the 2009 Form 540. However, the law, as set out above, determines when the statute of limitations begins and ends, and it does not start when wage garnishments begin; moreover, 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 at issue was filed late, the law prohibits the granting of it. 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.)

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<sup>1</sup> According to Appellant's 2009 Payment Ledger (Exhibit B), respondent collected \$6,581.44 from appellant, with \$190.00 (\$6,581.44, less \$6,391.44) being transferred to the 2010 taxable year (presumably pursuant to R&TC section 19108). Since neither party discusses the \$190.00, this panel will address it no further.

HOLDING

Appellant’s refund claim with respect to \$5,527.15 of the overpayment was not timely.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung  
Administrative Law Judge

We concur:

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Michael F. Geary  
Administrative Law Judge

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Josh Lambert  
Administrative Law Judge

Date Issued: 10/11/2022