

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

H. FOYT AND
B. FOYT

) OTA Case No. 21129285
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OPINION

Representing the Parties:

For Appellants:

Nancy A. Sellers, EA

For Respondent:

Nancy E. Parker, Tax Counsel IV

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Foyt and B. Foyt (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$1,041 for the 2015 taxable year.

Appellants waived their rights to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether appellants’ 2015 refund claim was timely.

FACTUAL FINDINGS

1. Appellants filed their 2015 California personal income tax return (Form 540) on April 15, 2019. All 2015 tax remittances were made via either withholding or estimated tax payments, and are reflected on the 2015 Form 540.
2. Appellants filed their amended 2015 Form 540 (Form 540X) on April 15, 2021, claiming a refund of \$1,041.
3. Respondent denied appellants’ claim because it was filed late.

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 Bracamonte*, 2021-OTA-156P; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Amounts withheld from wages and estimated tax payments 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);¹ or (3) one year from the date of overpayment.² (R&TC, § 19306.) In this appeal, the unextended due date for the 2015 Form 540 was April 15, 2016, and appellants did not file their 2015 Form 540X until April 15, 2021, which is also deemed to be the date of their overpayment/refund claim, with no payments made within one year of April 15, 2021; as such, it is clear that their claim is untimely.

Appellants seem to contend that since their 2015 Form 540 was filed on April 15, 2019, the statute of limitations should begin on that date. However, the law does not so provide. 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.)

¹ As relevant here, for Covid-19 purposes, the deadlines for all filings, including a claim for refund, were extended to July 15, 2020, for all taxpayers. See FTB's Press Release: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

² 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

Appellants’ 2015 refund claim was untimely.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...
Kenneth Gast
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge

Date Issued: 12/15/2022