

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. MOYER

) OTA Case No. 21057725
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OPINION

Representing the Parties:

For Appellant: Naomi Cardenas Pablano, CPA

For Respondent: Sarah J. Fassett, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Moyer (appellant) appeals actions by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$2,934 and \$4,952 for the 2012 and 2014 taxable years, respectively.

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

ISSUE

Whether appellant’s refund claims were timely.

FACTUAL FINDINGS

1. Appellant filed his 2012 California personal income tax return (Form 540) by the original due date of April 15, 2013.
2. In 2019, appellant filed an amended 2012 California personal income tax return (Form 540X), claiming a refund of \$2,934 based on a \$23,855 net operating loss (NOL) carryback from the 2014 taxable year. Respondent accepted the Form 540X as filed, but denied the refund claim for being untimely.
3. Appellant also filed a refund claim for the 2014 taxable year using NOL carrybacks from the 2016 taxable year. Respondent denied the 2014 refund claim. However, on appeal,

respondent conceded appellant's 2014 refund claim, stating that "at the conclusion of this appeal, respondent will refund/credit appellant the \$4,952 claimed on his amended 2014 tax return, plus any interest as allowed 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.) As relevant here, 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; or (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). (R&TC, § 19306.) While there is a special statute of limitations applicable to NOL carrybacks claimed on federal income tax returns (Internal Revenue Code (IRC), section 6511(d)(2)), California has no comparable special statute of limitations. (Cf. R&TC, § 19306; IRC, § 6511.)

Here, appellant's 2012 Form 540 was filed by its original due date, and four years from that date was April 15, 2017. Because appellant filed his 2012 Form 540X in 2019, it is untimely. Contrary to appellant's belief, California law does not start the running of the statute of limitations for refund claims, filed as the result of NOL carrybacks, from the applicable due date of the loss year Form 540. Further, since respondent conceded the 2014 refund claim, there is no need to analyze that year.

HOLDING

Appellant’s 2012 claim for refund is untimely; appellant’s 2014 claim for refund is granted per respondent’s concession as indicated above.

DISPOSITION

Respondent’s action with respect to the 2012 taxable year is sustained; respondent’s action with respect to the 2014 taxable year is reversed, as conceded on appeal, and the refund claimed for the 2014 taxable year is granted.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 12/27/2022