

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 22019386
C. BEATTY)
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OPINION

Representing the Parties:

For Appellant: C. Beatty
For Respondent: Christopher T. Tuttle, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 19324 and 19045, C. Beatty (appellant) appeals actions by Franchise Tax Board (respondent) denying appellant’s claims for refund of \$634, \$539, and \$964 for the 2015, 2016, and 2019 taxable years (taxable years at issue), respectively, and proposing additional tax of \$519.47 and \$712.40 for the 2016 and 2019 taxable years, respectively, and a frivolous amended return penalty of \$5,000 for each of the taxable years at issue, plus interest.

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

ISSUES

1. Was appellant’s 2015 refund claim timely?
2. Should respondent’s actions denying appellant’s 2015, 2016, and 2019 refund claims and to recover erroneous refunds for the 2016 and 2019 taxable years be sustained?
3. Does the Office of Tax Appeals (OTA) have jurisdiction to consider appellant’s appeal of the 2015, 2016, and 2019 frivolous amended return penalties?

FACTUAL FINDINGS

1. Appellant filed timely 2015, 2016, and 2019 California personal income tax returns (Form 540). Appellant’s Forms 540 and federal income tax returns for the taxable years

at issue showed wages earned, and the same was reported on appellant's Forms W-2. Each Form 540 claimed a refund of taxes withheld, net of tax liability, which respondent granted.

2. Appellant filed amended Forms 540 for the 2015, 2016, and 2019 taxable years in March 2021, reflecting zero federal adjusted gross income (AGI) and claiming a refund of all withholdings. Respondent granted the refund claims, net of the refunds previously paid to appellant per the originally filed Forms 540, in August 2021 for the 2016 and 2019 taxable years; the 2015 refund claim was denied because it was untimely.
3. In an attachment to the 2019 amended Form 540, appellant explained that the wages reported on the Form W-2 were not taxable income.
4. Subsequently, in November 2021, respondent issued letters to appellant denying the 2015, 2016, and 2019 claims for refund.
5. Respondent also issued frivolous amended return notices to appellant for each of the three taxable years at issue, imposing a \$5,000 penalty for each such year unless the subject returns were withdrawn. Appellant did not withdraw any of the amended returns.

DISCUSSION

Issue 1: Was appellant's 2015 refund claim timely?

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.) Amounts withheld from wages are deemed paid on the original due date of the Form 540. (See R&TC, § 19002(c).)

Here, appellant's 2015 Form 540 was filed by its original due date, and four years from that date was April 15, 2020. Because appellant filed the refund claim in March 2021, it is untimely. Furthermore, the one-year statute of limitations expired on April 15, 2017, one year after appellant's withholdings were deemed paid.

In addition, 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 2015 refund claim was filed late, the law prohibits the granting of it.

Issue 2: Should respondent's actions denying appellant's 2015, 2016, and 2019 refund claims and to recover erroneous refunds for the 2016 and 2019 taxable years be sustained?

FTB's determinations are presumed correct, and a taxpayer has the burden of proving them to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow, supra.*) 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).) If respondent makes or allows a refund that it later determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to R&TC section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations. The notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which respondent may mail a notice of deficiency assessment, whichever is later. (R&TC, § 19368.) Respondent shall abate the interest on an erroneous refund amount until 30 days after the date demand for repayment is made. (R&TC, § 19104(c).)

In this appeal, appellant claims to be neither an employee nor taxpayer under federal tax law, and quotes the following from section 3401(c) of the Internal Revenue Code: “[E]mployee’ includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.....” and “also includes an officer of a corporation.” (Emphasis added.) However, the federal definition of these terms begins with the word “includes” and, therefore, is not limited to the enumerated government and corporate workers, as appellant alleges. Moreover, this argument, and many others made by appellant, are not pertinent as to whether respondent issued an erroneous refund, and in fact have been determined by the IRS, respondent, and OTA to be frivolous. (See IRS Notice 2010-33, 2010-17 I.R.B. 609;

Appeal of Reed, 2021-OTA-326P.) Hence, such arguments are not persuasive and fail to overcome the presumption of correctness attendant to respondent's actions.

The record shows that respondent erroneously refunded appellant's 2016 and 2019 withholdings in August 2021, and made a demand for repayment in November 2021, while properly denying appellant's refund claims. Thus, respondent gave appellant notice well within the allotted time period, and appellant has not shown any error in respondent's actions. Furthermore, as decided above, appellant's 2015 refund claim was filed late, so respondent also properly denied the 2015 refund claim.

Issue 3: Does OTA have jurisdiction to consider appellant's appeal of the 2015, 2016, and 2019 frivolous amended return penalties?


The normal protest and appeal procedures do not apply to the frivolous return penalty. (See R&TC, §§ 19179, 19180(b).) The only process available to a taxpayer to contest the frivolous return penalty is to pay the penalty in full, then file a written claim for refund with respondent. (R&TC, §§ 19180(b), 19322.) If respondent denies the claim, the taxpayer may appeal to OTA. (R&TC, § 19324.) Because there is no evidence in the record showing that the penalty was paid and a refund of the penalty was requested, OTA has no jurisdiction to address this issue.

HOLDINGS


1. Appellant’s refund claim for the 2015 taxable year was untimely.
2. Respondent’s actions denying appellant’s 2015, 2016, and 2019 refund claims and to recover erroneous refunds it issued for the 2016 and 2019 taxable years were proper.
3. OTA does not have jurisdiction to consider appellant’s appeal of the frivolous amended return penalties.


DISPOSITION

Respondent’s actions are sustained.

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 Tommy Leung
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Keith T. Long
 Administrative Law Judge

Date Issued: 10/11/2022