

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. WILDSMITH

) OTA Case No. 220310014
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OPINION

Representing the Parties:

For Appellant:

S. Wildsmith

For Respondent:

Josh Ricafort, Tax Counsel

For Office of Tax Appeals:

Deborah Cumins,
Business Tax Specialist III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Wildsmith (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$13,718.99 for the 2015 taxable year.

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

ISSUE

Whether appellant’s refund claim for the 2015 taxable year is timely.

FACTUAL FINDINGS

1. Appellant did not file her 2015, 2016, and 2017 California Resident Income Tax Returns (Forms 540) until November 2021. FTB sent Notices of Proposed Assessment (NPAs) to appellant regarding these taxable years, and when no protests were filed, the NPAs went final.¹
2. For taxable year 2015, FTB used appellant's mortgage statement information to determine that she had a filing requirement.
3. On July 14, 2020, FTB applied a credit of \$7,717.30 from appellant's 2019 taxable year to the amount due for the 2015 taxable year.
4. FTB subsequently initiated collection action, through which it collected \$6,196.34 on October 2, 2020, and applied that amount to appellant's 2015 account.
5. Appellant's 2015 Form 540 reported \$0 taxable income and \$0 tax due. On that return, appellant also reported California income tax withheld of \$97.00. At the time the Form 540 was filed, FTB's records reflected payments totaling \$14,035.99² had been applied to appellant's 2015 tax account.

¹ In her opening brief, appellant refers to a payment by levy to FTB of \$24,295.83 on August 31, 2021. That amount was applied to amounts due for the 2016 and 2017 taxable years, as follows:

(a) On August 23, 2021, FTB initiated collection action for the 2016 and 2017 taxable years. On September 24, 2021, FTB collected payments of \$13,816.94 for 2016 and \$10,378.89 for 2017 (the payments total \$24,195.83, although FTB refers to a total of \$24,195.86 and appellant refers to levies from her checking account of \$24,295.83. The available evidence suggests that the payment amounts referenced by the parties represent the payments applied to amounts due for tax years 2016 and 2017) by levy from appellant's bank account.

(b) Appellant's 2016 Form 540 reported \$0 tax due. Since that return was filed within a year after the payment date of September 24, 2021, it represented a timely claim for refund of the \$13,816.94 paid for the 2016 taxable year.

(c) FTB applied \$4,527.66 of the \$13,816.94 to the amount it had billed for tax year 2017.

(d) FTB issued a refund to appellant of \$9,294.87 (\$13,816.94 - \$4,527.66 + \$5.59 credit interest = \$9,294.87).

(e) The amounts applied to tax year 2017 (the \$10,378.89 payment and the \$4,527.66 transferred from the 2016 tax year) have paid the entire amount billed by FTB.

(f) While FTB initially argued that appellant did not file a 2017 Form 540, following an inquiry from this panel FTB now concedes that it "will process appellant's 2017 income tax return as a timely claim at the conclusion of this appeal. Because FTB will accept appellant's 2017 tax return as a timely claim, any overpayment resulting from appellant's 2017 return will be credited or refunded to appellant."

Since these 2016 and 2017 amounts are accounted for, they will be discussed no further in this Opinion.

² The payments were \$97.00 of California income tax withheld, a \$7,717.30 credit from appellant's 2019 tax year applied to the amount owed for 2015, and \$6,196.34 collected through appellant's collection procedures. The total of those figures is \$14,010.64. It is not clear from the record why FTB has established a total of \$14,035.99. However, the difference of \$25.35 is minimal, and it credits appellant with more payments than are readily apparent. Thus, this discrepancy will not be addressed further.

6. FTB computed an overpayment of \$13,718.99 for the 2015 taxable year (\$14,035.99 paid less the collection cost recovery fee of \$317.00). FTB then denied a refund of appellant's overpayment of \$13,718.99 because the claim was untimely.

DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law or the Corporation Tax Law, for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301; *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proving that its claim for refund is timely and that a refund should be granted. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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),³ or (3) one year from the date of overpayment.⁴ (R&TC, § 19306.) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Benemi Partners, L.P., supra.*) When the IRS applies an overpayment from a recent taxable year to a deficiency for an earlier taxable year, the date of payment is deemed to be the date of the application of that overpayment. (See *Republic Petroleum Corp. v. U.S.* (1980) 613 F.2d 518 (5th Cir.); *Donahue v. U.S.* (1995) 76 AFTR.2d 95-5179 (Fed. Cl.); see generally Internal Revenue Code, § 6402(a) and Treas. Reg. § 301.6402-4.)

³ As relevant here, for COVID-19 purposes, the deadline for all filings, including a claim for refund, was 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#:~:text=Sacramento%20%E2%80%93%20The%20Franchise%20Tax%20Board,2019%20tax%20returns.>

⁴ As relevant here, for COVID-19 purposes, the one-year deadline for filing refund claims was July 15, 2020, for those claims due by June 15, 2020. (See FTB Notice 2020-02, March 30, 2020.)

In this appeal, the 2015 Form 540 was due April 15, 2016. Appellant filed her 2015 Form 540 in November 2021. To determine whether the return represented a timely claim for refund, it is necessary to consider each period identified in R&TC section 19306(a). Since appellant's return was not filed within a valid extension period, the first period is not applicable. Since November 2021 was more than a year after the four-year period from the due date of the return (which ended April 15, 2020), appellant's late filed return did not meet the requirements of the second period. With respect to the final period described in R&TC section 19306(a), the payments that were applied to the return were: (1) \$97.00 withheld from appellant's wages, which amount is deemed paid on the original due date of the return, April 15, 2016; (2) a \$7,717.30 credit transferred from appellant's 2019 overpayment, which FTB applied to the 2015 liability on July 14, 2020; and (3) \$6,196.34 collected by FTB on October 2, 2020. Since each of those dates is more than one year prior to November 2021, the date the return was filed, the requirements of the third period are also not met. Thus, the late filed 2015 Form 540, which showed that there was an overpayment of \$13,718.99, was not filed within any of the three periods established by law for filing a timely claim for refund.

Appellant's opening brief implies that the imposition of tax on an inaccurate estimate of income, and the inability to remedy this wrong because of a statute of limitations barrier, is unjust. Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (See *Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.)

Thus, in prescribing the statute of limitations for refunds, the law dictates the outcome of this appeal. (See *Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no statutory basis to accept appellant's 2015 Form 540 filed in November 2021 as a timely claim for refund. Therefore, the claim for refund of the \$13,718.99 applied to amounts billed for the 2015 taxable year was properly denied.

HOLDING

Appellant’s claim for refund of the overpayment for the 2015 taxable year is untimely.

DISPOSITION

FTB’s action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
CB1E7DA37831416

Josh Lambert
Administrative Law Judge

DocuSigned by:
Kenneth Gast
3AE5C32BB93B456

Kenneth Gast
Administrative Law Judge

Date Issued: 2/8/2023