

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

I. DIEGUEZ

) OTA Case No. 220510402
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OPINION

Representing the Parties:

For Appellant:

I. Dieguez

For Respondent:

Ellen L. Swain, Tax Counsel IV

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Dieguez (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claims for refund of \$2,410 and \$3,145 for the 2015 and 2016 taxable years, respectively.

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

ISSUE

Whether appellant’s 2015 and 2016 refund claims were timely.

FACTUAL FINDINGS

1. Appellant did not file her 2015 California Resident Income Tax Return (Form 540) until 2022. Appellant’s 2015 Form 540 showed an overpayment of \$2,410 from wage withholdings.
2. Appellant did not file her 2016 Form 540 until 2022. Appellant’s 2016 Form 540 showed an overpayment of \$3,145 from wage withholdings.
3. Respondent treated appellant’s 2015 and 2016 Forms 540 as refund claims, and denied them for being 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, citing *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 and 2016 Forms 540 were filed in 2022 and her refund claims for those taxable years were due in 2020 and 2021, respectively. Moreover, appellant's wage withholdings for 2015 and 2016 were deemed paid on April 15, 2016, and April 15, 2017, respectively. Since appellant did not file her 2015 and 2016 refund claims until 2022, they are untimely.

Appellant contends, among other things, that she had trouble finding a competent and affordable return preparer, she is hard working and pays all her bills, not ailing to the point that she needs tending to, and planned to invest the refunds she claimed back into the California economy. However, the language of the statute of limitations is explicit and strictly construed, and a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars that taxpayer from doing so at a later date. (*Appeal of Khan*, 2020-OTA-126P.) Such 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. (*Ibid.*; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) Simply put, there is no reasonable cause exception or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

HOLDING

Appellant’s 2015 and 2016 refund claims were not timely.

DISPOSITION

Respondent’s actions are sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 1/25/2023