

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
S. SINGAL AND)
M. SINGAL)
)
)
)
)

OTA Case No. 22029799

OPINION

Representing the Parties:

For Appellants: S. Singal and M. Singal

For Respondent: L. Red S. Gobuty, Tax Counsel IV
Cynthia D. Kent, Tax Counsel IV

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Singal and M. Singal (appellants) appeal an action by Franchise Tax Board (respondent) partially denying appellants’ claim for refund of \$32,823 for the 2016 taxable year.

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

ISSUE

Whether appellants’ refund claim for the 2016 taxable year was timely.

FACTUAL FINDINGS

1. After respondent received information that each appellant had sufficient income to require the filing of a 2016 California Resident Income Tax Return (Form 540), but none had been filed, demand notices and Notices of Proposed Assessment (NPAs) were issued to each spouse in 2018. When appellants did not protest the NPAs, the NPAs went final, and respondent commenced collection action in 2019 to satisfy the balance due on appellants’ 2016 account.

2. Appellants did not file their 2016 Form 540 until January 10, 2022, reporting \$5 as total tax, which respondent accepted as filed.
3. Respondent treated appellants' 2016 Form 540 as a refund claim for \$32,823.00¹ and, after reducing the assessed demand penalty and abating the late filing penalty and filing enforcement fee, denied \$32,314.55² of the claim because it was untimely. However, respondent's claim denial said nothing about the \$208.00 excess State Disability Insurance (SDI) claim.
4. During this appeal, in response to the Office of Tax Appeals' (OTA) request for additional briefing, respondent added the \$208.00 excess SDI to the amount of appellants' denied overpayment (resulting in a total of \$32,522.55), and again denied the refund claim 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 Li*, 2020-OTA-095P; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Amounts withheld from wages (including SDI) 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); or (3) one year from the date of overpayment. (R&TC, § 19306.)

Furthermore, taxpayers have three years from the original due date of the Form 540 to file a claim for refund of overpaid SDI taxes. (See R&TC, § 17061; Unemp. Ins. Code, § 1176.5.) In this appeal, appellants did not file their 2016 Form 540, which was due on April 15, 2017, until January 10, 2022, which is also the date of their refund claim. As such, it is

¹ This amount is comprised of taxes withheld and excess State Disability Insurance (SDI) tax, minus the \$5 tax liability. For instructions on how to get a refund for excess SDI withheld, see <https://www.ftb.ca.gov/refund/help-refund.html>. The statute of limitations for obtaining a refund of excess SDI is three years. (See Unemp. Ins. Code, § 1176.5.)

² This amount is comprised of taxes withheld minus amounts collected (\$37.80 was collected in 2019), various fees, and the remainder of the demand penalty.

clear that appellants' refund claim for the \$32,314.55 is untimely because the claim was made well beyond the four-year filing (which expired on May 17, 2021, due to COVID-19) and one-year payment (which expired on April 15, 2018) deadlines. With respect to the \$208.00 excess SDI, the law appears to deny appeal rights under R&TC section 19324 to appellants after respondent denies their refund claim. (See R&TC, § 17061(b), last sentence.) Instead, the law provides that respondent's denial is final unless appellants file a protest with the Director of Employment Development. (*Ibid.*) Thus, OTA has no jurisdiction to decide appellants' \$208.00 excess SDI claim.

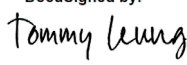
Appellants argue that respondent caused delays in filing their Form 540 by incorrectly assessing costs and, therefore, they should not be penalized for such errors. However, the law does not allow for a waiver of the statute of limitations based on reasonable cause. A taxpayer's failure, for whatever 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 Khan*, 2020-OTA-126P; *Appeal of Hammerman* (83-SBE-260) 1983 WL 15631.) Therefore, since the refund claim for \$32,314.55 was filed late, respondent properly denied it; with respect to the amounts remaining at issue, the law prohibits OTA from considering that refund. 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.)

HOLDING

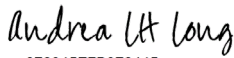
Appellants’ refund claim with respect to \$32,314.55 of the overpayment was not timely, and OTA has no jurisdiction to decide the \$208.00 excess SDI claim.

DISPOSITION

Respondent’s action with respect to the \$32,314.55 is sustained; no determination is made with respect to the \$208.00 excess SDI claim.

DocuSigned by:

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

Date Issued: 5/15/2023