

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
O. LAINEZ

) OTA Case No. 221011567
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OPINION

Representing the Parties:

For Appellant: O. Lainez

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Lainez (appellant) appeals actions by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$322 and \$886 for the 2016 and 2017 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 2016 and 2017 claims for refund were timely.

FACTUAL FINDINGS

1. Appellant timely filed his 2016 California Resident Income Tax Return (Return) by the original due date.
2. Appellant filed his 2017 Return on September 2, 2022, along with an amended 2016 Return. Both the 2017 Return and amended 2016 Return were claims for refund.
3. Respondent denied the refund claims for being untimely.

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 are deemed paid on the original due date of the Return. (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.)

In this appeal, appellant needed to file his 2016 refund claim before 2022, and his 2017 refund claim by April 15, 2022; furthermore, the record shows no tax payments were made during the one-year period ending on September 2, 2022. Thus, because appellant's 2016 and 2017 refund claims were filed on September 2, 2022, they are late.

Appellant appears to make a reasonable cause argument by contending that he is 63 years old and owes the IRS. 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 2016 and 2017 refund claims were filed late, respondent properly denied them. 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

Appellant’s 2016 and 2017 claims for refund 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:
Natasha Ralston
25E8FF08FE56478

Natasha Ralston
Administrative Law Judge

DocuSigned by:
John O Johnson
873D9797B9E64E1

John O. Johnson
Administrative Law Judge

Date Issued: 6/12/2023