

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
Y. OLMOS

) OTA Case No. 221111889
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OPINION

Representing the Parties:

For Appellant: Y. Olmos

For Respondent: Camille Dixon, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Olmos (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$2,956.09 and \$4,480.93 for the 2014 and 2015 taxable years, respectively.

Appellant elected to have this appeal decided pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

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

ISSUE

Whether appellant’s 2014 and 2015 claims for refund were timely.

FACTUAL FINDINGS

1. Appellant did not file her 2014 and 2015 California Resident Income Tax Returns (Form 540) until April 15, 2022, which respondent treated as claims for refund.
2. Respondent had information that appellant worked for the State of California during 2014 and 2015 and earned sufficient income to warrant the filing of a Form 540 for each of those two taxable years. Prior to April 15, 2022, respondent sent several notices to

appellant demanding that she either file her 2014 and 2015 Forms 540, submit copies of the Forms 540 if they were already filed, or explain why no Forms 540 were required to be filed.

3. After the notices went final, respondent commenced collection activity to satisfy appellant's tax liability.
4. Appellant did not make any payments for her 2014 and 2015 tax liabilities during the one-year period ending on April 15, 2022.
5. Respondent denied appellant's refund claims 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 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.)

In this appeal, appellant did not file her 2014 and 2015 Forms 540 (which were due prior to 2016 and 2017, respectively) until April 15, 2022, which is also the date of her refund claims. As such, it is clear that appellant's refund claims were untimely because the claims were made well beyond the four-year filing deadline (which expired before 2021) and one-year payment deadline (which only takes into account payments made¹ during the one-year period ending on April 15, 2022).

Appellant contends that her tax payments were garnished from her paychecks, which appears to be a reasonable cause argument. However, the law does not allow for a waiver of the statute of limitations based on reasonable cause. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) A taxpayer's failure, for whatever reason, to file a claim for refund or credit

¹ For the 2014 and 2015 taxable years, the record shows that appellant's final payments were made in 2017 and 2018, respectively.


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 2014 and 2015 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 did not file her 2014 and 2015 refund claims on time.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 9/18/2023