OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221111964
M. HOWELL AND S. HOWELL	
)

OPINION

Representing the Parties:

For Appellants: M. Howell and S. Howell

For Respondent: Joel M. Smith, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Howell and S. Howell (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claims for refund of \$4,695 for the 2016 tax year and \$4,927 for the 2017 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals decides this matter based on the written record.

ISSUE

Whether appellants filed timely claims for refund for the 2016 and 2017 tax years (the tax years at issue) for purposes of the statute of limitations.

FACTUAL FINDINGS

- 1. Appellants did not file timely 2016 and 2017 California income tax returns.
- 2. On March 20, 2018, appellants filed a Petition for Dissolution (Divorce) of Marriage. The court filed the final judgement finalizing the dissolution on September 21, 2021.
- 3. Appellants filed their 2016 and 2017 California income tax returns on September 6, 2022, reporting an overpayment for each tax year. Respondent treated the returns as claims for refunds.

- 4. Respondent denied appellants' claims for refund in letters dated September 29, 2022.
- 5. This timely appeal followed.

DISCUSSION

As relevant here, a claim for credit or refund must be filed within four years from the date the return was filed, if filed within an extension allowed by R&TC section 18567 or 18604; within four years from the last day prescribed for filing the return without regard to any such extension; or within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) For the 2016 tax year, the deadline for appellants to file a timely claim for refund would have been April 15, 2021; however, because of the COVID-19 pandemic, respondent postponed the deadline to May 17, 2021. For the 2017 tax year, the deadline for appellants to file a timely claim for refund was April 15, 2022. It is undisputed appellants filed their claim for refund after the statute of limitations expired, and thus, appellants are not entitled to refunds for the tax years at issue. Such fixed deadlines may appear harsh, particularly in cases such as this where a taxpayer cannot obtain a refund of an admitted and substantial overpayment; but the law considers such a harsh result to be an acceptable consequence of having an important obligation clearly defined. (*Appeal of Khan*, 2020-OTA-126P.)

Appellants argue they are entitled to a waiver of the statute of limitations for the tax years at issue because of their lengthy divorce proceeding. Specifically, appellants argue that the delay was warranted because "we were not able to come to terms on how deductions and expenses would be claimed." However, the law does not provide for the waiver of the statutory period based on this argument. 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, supra*.) This is true even when it is later shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Thus, appellants have not shown they are entitled to a refund of the overpayments made for the tax years at issue.

 $^{^1}$ See https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html.

HOLDING

Appellants did not file timely claims for refund for the tax years at issue for purposes of the statute of limitations.

DISPOSITION

Respondent's action is sustained.

Richard Tay

Administrative Law Judge

We concur:

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Andrea L.H. Long

Administrative Law Judge

Date Issued: 11/15/2023

DocuSigned by:

Sheriene Anne Ridenous

Sheriene Anne Ridenour Administrative Law Judge