

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
L. ALONZO) OTA Case No. 230112388
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OPINION

Representing the Parties:

For Appellant: L. Alonzo
For Respondent: Tristen Thalhuber, Attorney
Cynthia Kent, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Alonzo (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$7,173.25 for the 2015 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Veronica I. Long, Eddy Y.H. Lam, and Tommy Leung held an electronic hearing for this matter on September 22, 2023. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellant’s 2015 claim for refund was filed timely.

FACTUAL FINDINGS

1. Appellant did not file her 2015 California Resident Income Tax Return (Form 540) until October 31, 2022, which respondent accepted and processed.
2. Prior to appellant filing her 2015 Form 540, respondent sent her several notices, including a Demand for Tax Return notice and a Notice of Proposed Assessment (NPA), all of which went final without any response from appellant. The NPA included impositions of additional tax, a late filing penalty, a demand penalty, and a filing

enforcement fee. Subsequently, appellant made payments pursuant to an installment agreement.¹

3. Appellant's 2015 Form 540 reported total tax of \$68 and after applying \$8,000 in payments,² appellant requested a \$7,932 refund for the overpayment. Respondent refunded the \$1,649.11 that appellant paid within one year of the October 31, 2022 filing date, and denied the balance because of the expiration of the statute of limitations.

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 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 2015 Form 540, which was due on April 15, 2016, until October 31, 2022, which is also the date of the refund claim. As such, it is clear that appellant's 2015 refund claim is untimely because the claim was made beyond the four-year filing (which expired on July 15, 2020 (due to COVID-19) and one-year payment (which expired for payments made before October 31, 2021) deadlines.

Here, appellant makes various reasonable cause arguments, such as her caretaking, job-related, health, child-rearing, and economic challenges.³ However, there is no reasonable cause

¹ Respondent received payments totaling \$9,240 between the periods July 30, 2018, through April 8, 2022. Respondent also transferred an overpayment of \$99.11 from appellant's 2019 tax return to satisfy the outstanding balance for the 2015 taxable year on April 8, 2022. Therefore, respondent's record shows that appellant has a total of \$9,339.11 in payments made for the 2015 taxable year.

² Respondent's records show appellant made \$9,339.11 in payments; after adjusting the NPA and accounting for other payments applied to appellant's account, respondent arrived at an overpayment of \$7,173.25, net of the \$1,649.11 already refunded to appellant.

³ Appellant also asserts she had reasonable cause for filing late due to her difficulty in obtaining income information because she did not receive a Form 1099 from the company who contracted for her work, which ceased operations. However, Form 1099 information can be obtained from the IRS, and the responsibility to report income is not contingent on receiving the Form 1099 as appellant was aware of her earnings.

or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Further, neither the ill health of a taxpayer, nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie (dec'd)*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra*; *Appeal of Estate of Gillespie (dec'd), supra*.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

HOLDING

Appellant did not timely file her 2015 refund claim.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

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

Date Issued: 12/14/2023