

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230412957
B. CLARKE AND)
M. CLARKE)
_____)

OPINION

Representing the Parties:

For Appellants: B. Clarke

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Linda Frenklak, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Clarke and M. Clarke (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$1,184 for the 2017 taxable year.

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

ISSUE

Whether appellants filed their 2017 refund claim on time.

FACTUAL FINDINGS

1. Appellants did not file their 2017 California personal income tax return (Form 540) until April 6, 2023. Appellants’ 2017 Form 540 reported \$0 tax due and withholding credits of \$1,500, resulting in a \$1,500 overpayment. Respondent accepted appellants’ 2017 Form 540 and treated it as a claim for refund.
2. Before appellants filed their 2017 Form 540, respondent obtained information indicating that appellant-husband earned enough 2017 income to necessitate the filing of a Form 540, and sent him notices in 2021 regarding same. One of those notices was a Notice of Proposed Assessment (NPA), which imposed additional tax and a late filing

penalty, plus interest. When appellant-husband did not respond to the NPA, the NPA went final and respondent commenced collection proceedings.

3. After receiving appellants' 2017 Form 540, respondent applied the amount collected on April 15, 2022 (during the 12 months preceding April 6, 2023) to appellants' balances due for the 2019 and 2020 taxable years, and denied the rest of the refund claim (comprised of the \$1,500 withholding credit, net of collection costs) because it was filed late.

DISCUSSION

The taxpayer has the burden of proving 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.) 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.) Amounts withheld from wages are deemed paid on the original due date of the Form 540. (See R&TC, § 19002(c).)

Except in very limited situations that are not present here,¹ the filing of an untimely claim for refund for any reason bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*)

Here, appellants' 2017 Form 540 was due on April 15, 2018. Since appellants filed their 2017 Form 540 after April 15, 2022, the four-year refund statute of limitations is not available. The one-year statute of limitations for filing a timely refund was available for appellants to claim a refund for their April 15, 2022 payment, but not for the \$1,500 in withholding payments, which the law deems to have been paid on April 15, 2018 (the original due date of appellants' 2017 Form 540).

¹ R&TC section 19316 provides for a narrow exception for suspending the statute of limitations for claims for credit or refund when an individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. There is no evidence in the record that indicates such an exception applies to appellants for any relevant time herein.

On appeal, appellants make reasonable cause arguments. They contend that they disagree with respondent's denial of their claim for refund because they were impacted by the COVID-19 crisis in 2018, they had difficulty locating documents needed for filing their return, they delayed retirement, and they did not know of the applicable statute of limitations. However, the language of the statute of limitations is explicit and strictly construed, and a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars that taxpayer from doing so at a later date. (*Appeal of Khan*, 2020-OTA-126P.) If the refund claim is not timely filed, the claim cannot be granted even if the tax was erroneously, illegally, or wrongfully collected. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan, supra; Appeal of Estate of Gillespie*, 2018-OTA-052P.) Thus, appellants did not establish that their claim for refund was filed on time.

HOLDING

Appellants did not file their 2017 refund claim on time.

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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Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

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Eddy Y.H. Lam

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 2/22/2024