

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: |) | OTA Case No. 230112242 |
| S. FOREM AND |) | |
| A. FOREM |) | |
| |) | |
| |) | |

OPINION

Representing the Parties:

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| For Appellants: | David Silkman, CPA |
| For Respondent: | Tristen Thalhuber, Attorney Cynthia Kent, Attorney Supervisor |

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Forem and A. Forem (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$3,516 for the 2017 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Veronica I. Long, Asaf Kletter, and Tommy Leung held an electronic hearing for this matter on November 14, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants' 2017 claim for refund was timely.

FACTUAL FINDINGS

1. By April 15, 2018, respondent had received \$2,812 from appellants for their 2017 personal income taxes, but did not receive their 2017 California personal income tax return (Form 540) until November 8, 2022.
2. Appellants' 2017 Form 540 reported zero total tax and, including income tax withholding credits of \$704, an overpayment of \$3,516.

3. Respondent accepted appellants' 2017 Form 540, treating the 2017 Form 540 as a claim for refund. However, respondent denied appellants' claim for refund for the \$3,516 overpayment because it was untimely.

DISCUSSION

Taxpayers have 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 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.) Because appellants filed their 2017 Form 540 on November 8, 2022, none of these deadlines were met.

Appellants testified that their elderly age, COVID-19, inaccessible business/tax records, personal health issues, and family tragedies all contributed to the late-filing of their 2017 Form 540. While these events are compelling, the law provides for no reasonable cause 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*, 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*, *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.)

The time for filing a claim for refund may be extended during the period in which the taxpayer is financially disabled, as defined by R&TC section 19316(b). A taxpayer is considered financially disabled if: (1) the individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months; and (2) there is no spouse or other legally authorized person to act on the taxpayer's behalf in

financial matters. (R&TC, § 19316(b)(1) & (2).) However, appellants do not argue that financial disability existed, and the record reveals no presence of financial disability. Therefore, the statute of limitations cannot be extended.

HOLDING

Appellants' 2017 claim for refund was untimely.

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

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Tommy Leung

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Tommy Leung
Administrative Law Judge

We concur:

Signed by:

Veronica I. Long

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Veronica I. Long
Administrative Law Judge

DocuSigned by:

Asaf Kletter

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Asaf Kletter
Administrative Law Judge

Date Issued: 12/23/2024