

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18010867
)	
RICK FOWZER AND)	Date Issued: April 17, 2018
)	
RANDI SOUSA)	
)	

OPINION

Representing the Parties:

For Appellants:	Rick Fowzer
For Respondent:	Mira Patel, Tax Counsel
For Office of Tax Appeals:	Charles D. Daly, Tax Counsel III

M. Geary, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Rick Fowzer and Randi Sousa (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in denying appellants' claim for refund in the amount of \$5,941.53 for the 2006 tax year.

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

ISSUE

Does the statute of limitations (Section 19306) bar appellant's claim for refund or credit?

FACTUAL FINDINGS

1. Appellant Fowzer failed to timely file a 2006 California personal income tax return. Thereafter, respondent issued a Demand for Tax Return dated May 27, 2008, which allowed appellant Fowzer until July 2, 2008, to respond. Appellants failed to timely respond to the Demand for Tax Return.
2. Respondent issued a Notice of Proposed Assessment (NPA) dated September 2, 2008, notifying appellant Fowzer that it had no record of a response to its Demand for Tax

¹ Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

Return and that, as a result, respondent proposed an assessment for the 2006 tax year of \$9,636 in tax, based on income estimated from mortgage payments reported by the lender, a \$2,409 penalty for filing a late return, a \$2,409 penalty for failing to file upon demand, a filing enforcement fee of \$119, and accrued interest.

3. Appellant Fowzer did not protest respondent's NPA, and it became final. Subsequently, respondent began collection action. During the period from June 10, 2009, through April 9, 2012, respondent collected \$13,485.28 from appellants, which included a \$13.00 county lien fee. Appellants paid \$7,530.75 of this amount between July 26, 2011, and April 10, 2012.
4. On July 26, 2012, appellants filed a joint California personal income tax return for the 2006 tax year, reporting wages of \$8,444, negative adjusted gross income, and no tax liability. Respondent accepted the return as filed, eliminated the assessed 2006 tax liability and abated the previously assessed penalties. This resulted in an overpayment of \$13,462.28 in appellants' 2006 tax account (the total amount paid for that year less the lien fee).
5. Respondent treated appellant's late-filed return as a claim for refund or credit (claim). It determined that the claim was timely as to the portion of the overpayment, totaling \$7,530.75, that had been paid to respondent within 12 months prior to the filing of the claim, and that appellants were entitled to an interest credit totaling \$37.13. It thus determined that there was \$7,567.88 available for refund or credit.
6. Appellants, however, had outstanding tax liabilities due for other tax years. Thus, respondent applied the amount available for credit or refund to appellants' unpaid tax liabilities that were due for those years, 2004 (\$198.00), 2007 (\$1,517.14), and 2010 (\$5,852.74).²
7. By letter claim dated January 14, 2016, appellants requested a refund of \$5,941.53, the amount of the 2006 overpayment that had not been used to satisfy appellants' tax liabilities for other years. (This is the same amount sought in appellant's appeal letter dated December 7, 2016.) Appellant Fowzer stated that he was injured in 2005 and was in a very poor medical state for several years, while his wife had to accept a part-time

² \$198.00 + \$1,517.14 + \$5,852.74 = \$7,567.88.

teaching position during the economic downturn. Respondent denied this claim by letter dated September 14, 2016. This timely appeal followed.

DISCUSSION

Does the statute of limitations (Section 19306) bar appellants' claim for refund or credit?

Section 19306(a) provides in part that no refund shall be allowed after a period ending four years from the date the return was filed (if filed within the time prescribed by Section 18567), four years from the last date prescribed for filing the return (determined without regard to any extension of time for filing the return), or after one year from the date of the overpayment, whichever is later, unless before the expiration of the period, the taxpayer files a refund claim.

Appellants' return for 2006 was due on April 15, 2007. Appellants did not file their 2006 return until July 26, 2012, more than five years after the due date. FTB accepted the return as a claim for refund of the amounts previously paid to satisfy the FTB's tax and penalty assessments for 2006, but the timeliness of the claim remains at issue. Because the return was not timely filed, the last two time periods referenced above control. Here, the claim was not filed within four years of the due date for the return, or by April 15, 2011. Consequently, only the payments made within one year preceding the filing of the claim were subject to refund or credit. Appellants made payments during that period totaling \$7,530.75, but respondent already allowed that amount as credits against appellants' assessed liabilities for other tax periods. Appellants' appeal is for refund of the \$5,941.53 overpayment that remains in their 2006 tax account, which consists of the amounts paid more than a year prior to the filing of their 2006 tax return.

Appellant Fowzer stated that he was injured in 2005 and was in a very poor medical state for several years. Section 19316 stops the running of the statute of limitations and gives taxpayers more time to file a claim for refund if they can prove "financial disability." A taxpayer is deemed to be "financially disabled" if that individual "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" unless "that individual's spouse or any other person is legally authorized to act on that individual's behalf in financial matters" during that period. The record does not contain any evidence to establish qualification under section 19316.

Therefore, the statute of limitations bars appellants' claim.

HOLDING

The statute of limitations (Section 19306) bars appellants' claim for refund or credit.

DISPOSITION

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


Michael F. Geary
Administrative Law Judge

We concur:



Tommy Leung
Administrative Law Judge



Alberto T. Rosas
Administrative Law Judge