

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18063348  
FAZLOLLAH K. BEHESHTI )  
 ) Date Issued: May 10, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Fazlollah K. Beheshti

For Respondent: Eric A. Yadao, Tax Counsel III

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Fazlollah K. Beheshti<sup>1</sup> (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of: \$4,767.68 for the 1989 tax year; \$15,242.76 for the 1990 tax year; \$14,948.95 for the 1991 tax year; and \$11,006.01 for the 2002 tax year.<sup>2</sup>

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

**ISSUE**

Whether the statute of limitations in R&TC section 19306 bars appellant’s claim for refund.

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<sup>1</sup> Mr. Beheshti and his spouse, Jessica Beheshti, filed the undated claim for refund with FTB, with only Mr. Beheshti’s signature on the claim. The claim was received by FTB on January 4, 2018. As the Office of Tax Appeals (OTA) requires all parties making an appeal to sign the appeal (Cal. Code Regs., tit. 18, § 30102(f)), and only Mr. Beheshti signed the appeal, the case is docketed in Mr. Beheshti’s name only. He is the sole appellant.

<sup>2</sup> In its brief, FTB notes that the individual totals for each year, listed here, add up to \$45,965.40, although appellant’s claim sought a total refund of \$45,970.43. The small discrepancy is unexplained and immaterial.

## FACTUAL FINDINGS

1. *Tax Year 1989:* Appellant and his spouse filed a timely 1989 federal tax return on April 12, 1990, reporting married filing jointly status, income of \$11,169,<sup>3</sup> and no tax due. Subsequently, the Internal Revenue Service (IRS) disallowed certain federal Schedule C deductions. Based on the federal action, FTB issued a Notice of Proposed Assessment (NPA) to appellant and his spouse reflecting an increase of taxable income to \$350,045.00, additional tax of \$30,734.00, an accuracy-related penalty of \$7,683.50, and interest of \$81,575.57, for a balance owed of \$119,993.07. Appellant and his spouse did not protest the NPA and the balance became due and payable on January 30, 2004.
2. *Tax Year 1990:* Appellant and his spouse filed a timely 1990 federal tax return on April 15, 1991, reporting married filing jointly status, income of \$10,289, and no tax due. Subsequently, the IRS disallowed certain federal Schedule C deductions. Based on the federal action, FTB issued a NPA to appellant and his spouse reflecting an increase of taxable income to \$652,243.00, tax of \$57,835.00, an accuracy-related penalty of \$11,567.00, and interest of \$124,791.10, for a balance owed of \$194,193.10. Appellant and his spouse did not protest the NPA and the balance became due and payable on January 30, 2004.
3. *Tax Year 1991:* Appellant and his spouse filed a timely 1991 federal tax return on April 15, 1992, reporting married filing jointly status, income of \$22,902, and \$112 tax due. Subsequently, the IRS disallowed certain federal Schedule C deductions. Based on the federal action, FTB issued a NPA to appellant and his spouse reflecting an increase of taxable income to \$571,908.00, additional tax of \$54,575.00, an accuracy-related penalty of \$10,914.80, and interest of \$99,942.15, for a balance owed of \$165,430.95. Appellant and his spouse did not protest the NPA and the balance became due and payable on January 30, 2004.
4. *Tax Year 2002:* Appellant and his spouse filed a timely 2002 federal tax return on August 15, 2003, reporting married filing jointly status, total tax liability of \$20,150, withholding of \$19, and a balance of \$20,139 due. Appellant and his spouse did not pay

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<sup>3</sup> FTB's brief does not specify if this is the amount of adjusted gross income (AGI), but we assume that it is. Neither party provided us with copies of appellant's 1989 returns. Because the original returns were filed approximately 29 years ago, OTA will rely upon the numbers provided by FTB in its brief, which are corroborated by the NPAs, FEDSTAR reports, and billing records.

the balance due and FTB issued a series of payment notices for tax, a late payment penalty, and applicable interest. The final notice dated November 24, 2003, reflects tax of \$20,150.00, penalty of \$1,811.79, interest of \$673.20, and an adjustment of \$19.00 for a total of \$22,615.99.

5. Appellant filed a Chapter 11 bankruptcy petition in United States Bankruptcy Court on February 27, 2004, which was subsequently converted to a Chapter 7 petition. FTB filed a \$508,726.89<sup>4</sup> proof of claim, for the 1989, 1990, 1991, and 2002 tax years.
6. Although FTB continued to send annual notices to appellant reflecting the unpaid balances and accruing interest, FTB suspended collection on all outstanding obligations for the years on appeal, as required by law.
7. Following notice of the bankruptcy Chapter 7 discharge date of July 11, 2006, FTB adjusted the amount due for the 1989, 1990 and 1991 tax years. FTB wrote off the accuracy-related penalties, amnesty penalties and associated interest.
8. FTB issued a post-bankruptcy notice on August 29, 2006, showing a balance due of \$652,587.42, and issued five tax due notices. FTB did not adjust the 2002 tax year amounts due, relying upon title 11 of the United States Code, sections 523(a)(1)(A) and 523(a)(7).
9. FTB received a payment from the bankruptcy trustee of \$421,541.38 on December 11, 2007, and applied it to appellant's liabilities for tax and accrued interest (not penalties) for the years at issue here. FTB pursued involuntary collection for the outstanding liabilities for the 1989, 1990, 1991, and 2002 tax years. FTB eventually issued earnings withholding orders that resulted in additional amounts being received for the years at issue. FTB received appellant's final payments for the years at issue on the following dates: 1989 tax year, July 11, 2011; 1990 tax year, January 15, 2014; 1991 tax year, January 9, 2015; 2002 tax year, October 4, 2010.
10. Appellant filed a claim for refund on January 4, 2018, stating that FTB had been paid in full by the bankruptcy proceeding and seeking a refund of money paid by wage garnishment.<sup>5</sup> After FTB denied the refund claim, this timely appeal followed.

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<sup>4</sup>The amount included tax, penalties and statutory interest calculated as of the petition filing date.

<sup>5</sup>The documents provided by FTB indicate that wage garnishment occurred for appellant's wife, Jessica Beheshti.

## DISCUSSION

The last day to file a claim for refund is the later of: (1) four years from the date the return is filed, if filed within the extended due date; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. (R&TC, § 19306; *Appeal of Estate of Gillespie (dec'd)*, 2018-OTA-052P, June 13, 2018.) A taxpayer must establish the entitlement to a refund by a preponderance of the evidence. (*Id.*) The language of the statute is explicit and must be strictly construed. (*Appeal of Avril (78-SBE-072)* 1978 WL 3545.) While the statute of limitations may be tolled when a taxpayer shows that he is “financially disabled,” appellant has provided no facts to support a disability argument.<sup>6</sup> (R&TC, § 19316, subd. (a).)

Under the four-year statute of limitations, the date for filing a refund expired *four years after* the following dates: for the 1989 return, April 15, 1990; for the 1990 return, April 15, 1991; for the 1991 return, April 15, 1992; and for the 2002 return, August 15, 2003. Thus, while Appellant did not file his claim for refund until January 4, 2018, the deadlines for filing the claim for refund passed in 1994, 1995, 1996, and 2007, for the 1989, 1990, 1991, and 2002 tax years, respectively. Appellant also failed to satisfy the statute of limitation under the one-year statute of limitations, as FTB received the final payments for the years at issue more than a year prior to the January 4, 2018 date of the refund claim: for the 1989 tax year, on July 11, 2011; for the 1990 tax year, on January 15, 2014; for the 1991 tax year, on January 9, 2015; for the 2002 tax year, on October 4, 2010. Consequently, appellant’s claim for refund is barred by the statute of limitations.

Appellant also argues that he is entitled to an abatement of the penalties and interest because his liabilities were discharged in a federal bankruptcy proceeding, and therefore he is entitled to a refund of amounts paid to FTB. However, OTA lacks jurisdiction to determine whether an income tax liability has been discharged in a federal bankruptcy proceeding. (*Appeal of Smith (81-SBE-145)* 1981WL 11870 [“That is a matter which falls within the general jurisdiction of the bankruptcy court”].) Therefore, OTA does not have jurisdiction to consider appellant’s bankruptcy argument.

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<sup>6</sup> “Financial disability” requires a taxpayer show an inability to manage financial affairs because of a mental or medical impairment for a continuous period over one year in duration. (R&TC, § 19316, subd. (b)(1)(2).)

HOLDING

Appellant's claim for refund is barred by the statute of limitations.

DISPOSITION

FTB's action in denying appellant's claim for refund is sustained in full.

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Jeff Angeja*  
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Jeffrey G. Angeja  
Administrative Law Judge

DocuSigned by:  
*Grant S. Thompson*  
FC572D5881AE41B...  
Grant S. Thompson  
Administrative Law Judge