

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

In the Matter of the Appeal of:  
**STEVEN M. GREFFIN**

) OTA Case No. 18063261  
)  
) Date Issued: October 11, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Karl Schramek, CPA

For Respondent: Joel Smith, Tax Counsel

For Office of Tax Appeals: Andrea Long, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Steven M. Greffin (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$51,976 for the 2012 tax year.

Appellant waived appellant’s right to an oral hearing, and therefore, we decide the matter based on the written record.

**ISSUE**

Whether appellant’s refund claim was timely filed.

**FACTUAL FINDINGS**

1. On July 1, 2014, appellant late-filed a 2012 California Resident Income Tax Return using the “single” filing status.
2. Thereafter, FTB issued to appellant a Return Information Notice showing a revised balance due of \$24,891.29.
3. Between August 20, 2014, and January 28, 2016, appellant reduced appellant’s 2012 account balance by making monthly payments of \$275. On February 12, 2016, appellant’s 2012 balance was satisfied in full when FTB transferred a payment of \$14,308.70 from appellant’s 2014 account.

4. On December 15, 2017, appellant filed an amended return for the 2012 tax year, claiming a net operating loss (NOL) carryback from the 2014 tax year and an overpayment of \$51,976.
5. FTB processed appellant's 2012 amended return as filed, but denied appellant's refund claim because it was untimely filed.

### DISCUSSION

R&TC section 19306(a), provides in part that no credit or refund shall be allowed unless a claim for refund is filed within one of these three periods: (1) four years from the date the return was filed, if the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*See Appeal of Avril (78-SBE-072) 1978 WL 3545.*) Federal courts have stated that 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. (*Prussner v. United States (7th Cir. 1990) 896 F.2d 218, 222.*)

Because appellant did not timely file a 2012 original return, under the four-year statute of limitations, appellant was required to file a refund claim no later than April 15, 2017, which is four years from the original due date of that return. And under the alternative one-year statute of limitations, appellant's refund claim was required to be filed no later than February 12, 2017, which is one year from the most recent credit to appellant's 2012 account. Therefore, under R&TC section 19306(a), the statute of limitations for filing a timely refund claim expired on April 16, 2017.

However, pursuant to R&TC section 19316, the time for filing a claim for refund may be tolled during the period in which an individual taxpayer is "financially disabled." 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 person who is legally authorized to act on the individual taxpayer's behalf in financial matters during the relevant period. (R&TC

§§ 19316(b)(1) and (2).) Taxpayers bear the burden of establishing financial disability by a preponderance of the evidence. (Cal. Code Regs., tit. 18 §§ 30219(a) and (c).)

In support of appellant's assertion that the applicable statute of limitations should be tolled due to financial disability, appellant provided a Patient Clinical Summary, which indicates that appellant visited an urgent care facility on March 28, 2017, and again on April 1, 2017, for a chest cough which appellant described as a "5/10" in severity, with 10 being "the worst imaginable." Appellant also provided numerous medical records and other documentation relating to the extensive medical issues of appellant's spouse from 2015 through 2018. Appellant specifically points to November 2017 through May 2018 as the period in which appellant was unable to manage financial affairs due to these medical issues.

We find appellant's contentions to be unavailing. Appellant's two visits to an urgent care facility for a chest cough of moderate severity over a period of five days, does not demonstrate that appellant suffered from a terminal impairment or one expected to last more than 12 months, such that appellant was unable to manage appellant's financial affairs. Further, while we are deeply sympathetic to appellant's situation, a taxpayer's inability to manage financial affairs due to the medical issues of a spouse, is insufficient to establish financial disability. (*Brosi v. Commissioner* (2003) 120 T.C. 5, 10 [impairment must be that of the taxpayer and not a third person].)<sup>1</sup> Moreover, as demonstrated above, the statute of limitations expired on April 16, 2017. Thus, even assuming appellant was financially disabled from November 2017 through May 2018, this would be ineffective to toll a statute of limitations which had expired months prior.

Finally, appellant's refund claim relates to overpayments made for the 2012 tax year. Thus, there is simply no merit to appellant's remaining contention that "the statute of limitations should not be based on 2012, but rather based on 2014, which is the year the [NOL] occurred."

Accordingly, we find that appellant has not established that the statute of limitations was tolled due to financial disability.

#### HOLDING


Appellant's refund claim was not timely filed.

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<sup>1</sup> Because the applicable language of R&TC section 19316 pertaining to financial disability is patterned after Internal Revenue Code section 6511, the federal courts' interpretation of the applicable standard is persuasive authority in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

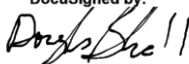
DISPOSITION

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

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Nguyen Dang  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

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Douglas Bramhall  
Administrative Law Judge