OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

A. CANANN AND
M. CANANN (DEC'D)

OTA Case No. 18042560

OPINION

Representing the Parties:

For Appellants: A. Canann

For Respondent: Joel L. Smith, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Canann and M. Canann (appellants) appeal an action by Franchise Tax Board (FTB) in denying appellants' claim for refund of $11,347.99 for the 2012 tax year.

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

ISSUE

Whether appellants' claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. For the 2012 tax year, FTB obtained information that indicated M. Canann (appellant-husband) paid mortgage interest of $20,613 on California real property. However, FTB's records showed that appellant-husband had not filed a 2012 California income tax return.
2. On January 14, 2014, FTB issued appellant-husband a Demand for Tax Return (Demand) for the 2012 tax year. The Demand stated that FTB received information that appellant-husband made mortgage interest payments in 2012, indicating that he may have a filing requirement.
3. When FTB did not receive a 2012 tax return, it issued a Notice of Proposed Assessment (NPA) for the 2012 tax year on March 17, 2014. In the NPA, FTB estimated appellant-

husband's 2012 income to be $123,678 and proposed an assessment of additional tax of $7,084, a late-filing penalty of $1,771, a notice and demand penalty of $1,771, and a filing enforcement cost recovery fee of $78, plus interest. Appellant-husband did not protest the NPA, which went final, and the liabilities became due.

4. FTB received full payment of $11,347.99 on November 26, 2014.
5. Appellants filed a joint tax return for the 2012 tax year on July 15, 2017, reporting no tax liability.[1] FTB deemed the filing as a claim for refund.
6. FTB processed the return and accepted the return as filed. Based on the amounts reported in the tax return, FTB reduced appellants' tax liability to zero, abated the penalties, and waived the fee and interest. This resulted in an overpayment of $11,347.99 for the 2012 tax year, which is the amount appellants paid on November 26, 2014, as noted above. However, FTB determined that the overpayment of $11,347.99 was barred by the statute of limitations, and that it could not issue a refund as requested. FTB issued a letter denying the refund claim. This timely appeal followed.

DISCUSSION

No credit or refund shall be allowed or made if a refund claim is not filed by the taxpayer within the later of: (1) four years from the date the return was 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 overpayment. (R&TC, § 19306(a).)

The law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances. A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Hammerman* (83-SBE-260) 1983 WL 15631.) This is true even when it is later shown that the tax was not owed in the first instance. As explained by the United States Supreme Court in *United States v. Dalm* (1990) 494 U.S. 596, 602: "[U]nless a claim for refund of a tax has been filed within the time limits imposed by [Internal Revenue Code] section 6511(a) [the statute of limitations for filing a federal refund claim], a suit for refund, regardless of whether the tax is alleged to have been 'erroneously,' 'illegally,' or 'wrongfully collected,' may not be maintained in any court."

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[1] Appellant-husband passed away in 2013, and the joint return was signed only by A. Canann (appellant-wife).

Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co*. (1946) 329 U.S. 296, 301.) Finally, there is no authority to toll the statute of limitations for equitable reasons. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellants' 2012 California tax return, filed on July 15, 2017, is considered their claim for refund. For the 2012 tax year, the four-year statute of limitations period expired on April 15, 2017, which is three months before the filing of appellants' claim for refund. Therefore, appellants filed their claim for refund past the four-year statute of limitations period.

Appellants also filed their claim for refund past the one-year statute of limitations period. Because they made their overpayment at issue (i.e., the $11,347.99) on November 26, 2014, the one-year statute of limitations period for the 2012 tax year expired on November 26, 2015. Accordingly, appellants filed their July 15, 2017 claim for refund past the one-year statute of limitations period. Therefore, appellants' claim for refund is barred by the statute of limitations, unless it can be shown that the period for filing a claim for refund should be extended pursuant to financial disability.

Financial Disability

Pursuant to R&TC section 19316, the time period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is "financially disabled," as defined by that provision. The running of the period for filing a claim for refund is suspended if: (1) "an 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 who can act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(1)-(2).)

When a taxpayer alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs. (R&TC, § 19316(a); *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Appeal of Meek*, *supra*.)

Appellant-wife contends that she was financially disabled due to stress and grief resulting from her husband’s terminal illness, which was diagnosed in 2011, and resulted in his passing in 2013. She contends that it took over three years to put her financial life back in order. Appellant-wife also states that her mother and father passed in 2012 and 2013, respectively. Appellant-wife provides a declaration from her physician dated July 2, 2019, which states that, due to such difficulties, her “mental impairment was continuously ongoing for several years (2012-2017),” and that “she was unable to properly manage her financial affairs.”

FTB provides an article dated April 8, 2015, which states that appellant-wife is the owner, executive producer, and playwright of a dinner theater group. The article states that appellant-wife took over the business around the time of her husband’s passing and describes her active involvement in the business. Appellant-wife counters that the business suffered significant losses in 2014 and 2015, which evidences that she did not have the financial competence to run the business.

While the unfortunate confluence of deaths in appellant-wife’s family could provide a predicate for financial disability, the evidence does not indicate that she was financially disabled. Her physician states that she was unable to “properly” manage her financial affairs, whereas the statute requires an inability to manage any financial affairs, regardless of whether the affairs were properly managed or not. Furthermore, unlike the newspaper article, the physician’s note is not based on a contemporaneous observation and is, therefore, accorded less weight.

Appellant-wife’s running of the dinner theater group - even at a loss - does not evidence an inability to manage her financial matters. She admits that running the business and supporting her family contributed to the failure to timely file the return, which shows that she was too busy to file the return, not that she was financially disabled. While we are sympathetic to the difficulties experienced by appellant-wife, she has not shown that she was financially disabled such that the statute of limitations should be extended.

HOLDING

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

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Patrick J. Kusiak
8E20779F0CD7435
Patrick J. Kusiak
Administrative Law Judge

Date Issued: 4/3/2020