

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

In the Matter of the Appeal of:  
**MARTIN P. HAEBERLI AND**  
**TRACEY L. GROWN**

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) OTA Case No. 19034511  
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**OPINION**

Representing the Parties:

For Appellants: Charles H. Enders, Jr., CPA

For Respondent: Gi Nam, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Martin P. Haerberli and Tracey L. Grown (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claims for refund of \$7,167.04 for the 2012 tax year;<sup>1</sup> \$14,726.62 for the 2013 tax year;<sup>2</sup> \$1,918.18 for the 2014 tax year;<sup>3</sup> and \$10,961.50 for the 2015 tax year.<sup>4</sup>

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

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<sup>1</sup> This amount consists of a late-filing penalty of \$6,689.50 and an estimated tax penalty of \$477.54. On appeal, respondent concedes that appellants are entitled to an abatement of the late-filing penalty. Respondent states that although it is barred by the statute of limitations from refunding or crediting the late-filing penalty, it will nonetheless credit the 2012 account by the late-filing penalty amount to offset any additional 2012 tax year liability.

<sup>2</sup> This amount consists of a notice and demand (demand) penalty of \$14,117.00 and an estimated tax penalty of \$609.62. On appeal, respondent concedes that appellants are entitled to an abatement of the demand penalty. Respondent states that although it is barred by the statute of limitations from refunding or crediting the demand penalty, it will nonetheless credit the 2013 account by the demand penalty amount to offset any additional 2013 tax year liability.

<sup>3</sup> This amount consists of a demand penalty of \$1,832.75 and an estimated tax penalty of \$85.43. On appeal, respondent concedes to abate the demand penalty.

<sup>4</sup> This amount consists of a late-filing penalty of \$3,781.25 and a demand penalty of \$7,180.25. On appeal, respondent concedes to abate both penalties.

### ISSUES

1. Whether appellants timely filed their claim for refund for the 2012 or 2013 tax year.
2. Whether appellants have established that the estimated tax penalty should be waived for the 2014 tax year.

### FACTUAL FINDINGS

1. Appellants untimely filed a 2012 California return on July 7, 2015, and reported a tax due of \$19,282 and self-imposed an estimated tax penalty of \$174. Respondent processed the return and imposed a late-filing penalty and increased the estimated tax penalty amount.
2. Appellants untimely filed a 2013 California return on September 14, 2016, and reported an overpayment of \$5,532, self-imposed an estimated tax penalty of \$606, and requested a refund of \$4,926. Respondent processed the return and imposed a demand penalty and increased the estimated tax penalty amount.
3. Appellants filed their 2014 California return on February 14, 2017, and reported an overpayment of \$22,578 and self-imposed an estimated tax payment of \$91. Appellants requested the resulting overpayment be transferred to their 2015 account. Respondent processed the return and imposed a demand penalty and increased the estimated tax penalty amount.
4. Appellants made their final payment on the 2012 account on June 30, 2016. Appellants made their final payment on the 2013 account on December 14, 2016.
5. Respondent received appellants' claim for refund letter for the 2012 tax year on November 15, 2018. Respondent received the claim for refund letters for the 2013 and 2014 tax years on November 19, 2018. Respondent denied appellants' claims for refund.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants timely filed their claim for refund for the 2012 or 2013 tax year.

R&TC section 19306(a) provides, in part, that no credit or refund shall 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 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 taxpayer has the burden of proof to show that he or she is entitled to a refund. (*Appeal of Gillespie*, 2018-OTA-052P.) The language of R&TC section 19306 is explicit and must be strictly construed. (See *Appeal of Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him or her from doing so at a later date. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.)

Here, appellants filed their 2012 refund claim on November 15, 2018. Because appellants did not timely file a 2012 return, appellants were required to file a refund claim no later than April 15, 2017, under the four-year statute of limitations, which is four years from the original due date of that return. Under the alternative one-year statute of limitations, appellants were required to file their refund claim no later than June 30, 2017, which is one year from the date appellants made their final payment satisfying the penalties they owed for the 2012 tax year.

Appellants filed their 2013 refund claim on November 19, 2018. Because appellants did not timely file a 2013 return, appellants were required to file a refund claim no later than April 15, 2018. Under the alternative one-year statute of limitations, appellants were required to file a refund claim no later than December 14, 2017, which is one year from the date appellants made their final payment satisfying the penalties they owed for the 2013 tax year.

Accordingly, since appellants did not timely file a refund claim under either the four-year or one-year statute of limitations for 2012 or 2013, they are barred from seeking a refund for those tax years.

Pursuant to R&TC section 19316, the time for filing a claim for refund may be suspended if 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. The definition of a financially disabled individual is substantially similar to the federal definition under Internal Revenue Code (IRC) section 6511(h)(2).

To demonstrate financial disability, a taxpayer must submit FTB Form 1564, which requires a physician's affidavit that explains the nature and duration of the taxpayer's physical or

mental impairments. (*Appeal of Meek* (2006-SBE-001) 2006 WL 864344.)<sup>5</sup> In addition, the taxpayer must show that he or she satisfies the strict definition of financial disability such that the taxpayer could not manage his or her financial affairs; it is insufficient to show that the taxpayer could not engage in a regular occupation. (*Ibid.*) The period of financial disability must occur during the limitations period. (*Ibid.*)

Appellants have provided various medical records regarding each appellant, as well as their daughter, ranging from 2006 through 2013, a third person's death certificate from 2017, and a third person's Physician's Report for Residential Care Facilities for the Elderly from 2018. However, the record does not indicate that either appellant was financially disabled during any relevant period. Also, a claim for financial disability is only effective if the period of disability occurred within the relevant time period in R&TC section 19306.

Moreover, appellants have provided neither FTB Form 1564 nor a physician's affidavit stating that either appellant was unable to manage his or her financial affairs within the running of any period as specified in R&TC section 19306. Further, the taxpayer must be physically or mentally impaired, not a third person. (*Brosi v. Commissioner* (2003) 120 T.C. 5, 10.) Accordingly, we find that appellants have not established that they filed their refund claim for 2012 or 2013 within the applicable statute of limitations or that financial disability tolled the statute of limitations.

Issue 2: Whether appellants have established that the estimated tax penalty should be waived for the 2014 tax year.

Except as otherwise provided, R&TC section 19136 conforms to IRC section 6654 and imposes a penalty for the underpayment of estimated tax where the taxpayers' installment tax payments are less than the amounts due at the end of the installment periods. For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (R&TC, § 19136.1; IRC, § 6654(c)(2).) This penalty is similar to an interest charge, which applies from the installment due date to the earlier of April 15 of the following tax year or the date on which the underpayment is paid. (IRC, § 6654(b)(2).)

There is no general reasonable cause exception for the estimated tax penalty. (*Grosshandler v. Commissioner* (1980) 75 T.C. 1, 20-21; *Estate of Sanders v. Commissioner*,

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<sup>5</sup> R&TC section 19316(a) provides that financial disability shall be established in accordance with procedures and requirements specified by respondent.

T.C. Memo 2018-104; *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)  
Instead, IRC section 6654(e)(3)(A) provides a limited exception to waive the penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience.<sup>6</sup>

Appellants have not provided any argument and the appeal record does not indicate a casualty, disaster, or other unusual circumstances affecting the ability to pay estimated tax payments that would support a finding that the limited exceptions of IRC section 6654(e)(3) apply to this appeal. Accordingly, appellants have not demonstrated that they are entitled to a waiver of the estimated tax penalty for the 2014 tax year.

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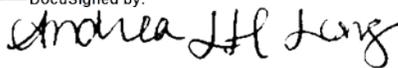
<sup>6</sup> IRC section 6654(e)(3)(B) also provides for the waiver of the penalty if the underpayment was due to reasonable cause and not to willful neglect, but only for individuals who retired after attaining the age of 62 in the tax year or who became disabled in the tax year. Appellants do not contend, and the appeal record does not indicate, that either appellant retired or became disabled during 2014. Neither of these conditions are shown to be present here.

HOLDINGS

1. Appellants did not timely file their claim for refund for the 2012 or 2013 tax year.
2. Appellants have not established that the estimated tax penalty should be waived for the 2014 tax year.

DISPOSITION

Respondent’s action is modified in accordance with its concession on appeal to:  
 (1) credit the 2012 account by the late-filing penalty amount for the 2012 tax year; (2) credit the 2013 account by the demand penalty amount for the 2013 tax year; (3) abate the demand penalty for the 2014 tax year; and (4) abate the late-filing penalty and the demand penalty for the 2015 tax year. Respondent’s action is otherwise sustained.

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 Andrea L.H. Long  
 Administrative Law Judge

We concur:

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 Alberto T. Rosas  
 Administrative Law Judge

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 Kenneth Gast  
 Administrative Law Judge

Date Issued: 2/10/2020