

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

In the Matter of the Appeals of:

**D. WILKINSON**) OTA Case Nos. 18053079, 18063352  
)  
)  
)  
)  
)**OPINION**

Representing the Parties:

For Appellant:

Mounia Boukhalfa,  
Tax Appeals Assistance Program

For Respondent:

Joel Smith, Tax Counsel

For Office of Tax Appeals:

William J. Stafford, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Wilkinson (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$1,610.00, \$1,640.00, \$1,810.59, \$1,829.00, and \$1,765.03 for, respectively, for taxable years 2007 through 2011.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Jeffrey I. Margolis, and Amanda Vassigh held a telephonic, oral hearing for this matter in Sacramento, California, on March 26, 2020. At the conclusion of the hearing, this matter was submitted for decision.

**ISSUE**

Has appellant established that her financial disability tolled the statute of limitations to file claims for refund for taxable years 2007 through 2011?

FACTUAL FINDINGS

1. Appellant filed timely California income tax returns, with a filing status of single, for taxable years 2007 through 2011, erroneously reporting her social security income as taxable.<sup>1</sup>
2. On April 15, 2017, appellant filed amended California returns for tax years 2007 through 2011, also using a filing status of single, claiming California adjustments (subtractions) for the social security income appellant had previously reported as taxable on her original California returns.
3. FTB accepted appellant's amended returns, reduced appellant's tax liabilities, and treated the returns as claims for refund, which it denied as being barred by the statute of limitations.
4. Appellant timely appealed FTB's denial of the claims for refund for taxable years 2007 and 2008 on April 27, 2018, and for taxable years 2009, 2010, and 2011, on June 15, 2018.
5. On appeal, appellant submitted a physician's letter (from Dr. Anderson) that described appellant's ongoing physical impairments. Appellant also provided an affidavit dated March 29, 2019, from Dr. Anderson, which stated under penalty of perjury, that appellant suffered physical impairments which prevented appellant from managing her financial affairs. The affidavit reflected that appellant's impairments lasted for a continuous period of not less than 12 months and prevented appellant from managing her financial affairs from April 1, 2007, through May 1, 2019.
6. Appellant also provided an affidavit dated March 19, 2019, from another physician (Dr. Schafer).<sup>2</sup> Dr. Schafer stated, under penalty of perjury, that appellant suffered physical impairments which prevented appellant from managing her financial affairs, and enumerated appellant's physical infirmities. The affidavit reflected that appellant's impairments lasted for a continuous period of not less than 12 months and prevented appellant from managing her financial affairs from April 1, 2007, through May 1, 2019.

---

<sup>1</sup> Generally, social security income is not taxable for California income tax purposes. (R&TC, § 17087(a).)

<sup>2</sup> Appellant submitted two affidavits from Dr. Schafer. We refer to the affidavit that contains the dates of appellant's disability.

7. Appellant prepared FTB Form 1564 (Financially Disabled – Tolling of the Statute of Limitations), on which she reported that no spouse or any other person was authorized to act on her behalf in financial matters.
8. At the oral hearing, appellant testified under oath that she was disabled, suffered from multiple fractures to the spine and had (since 1987) suffered from multiple sclerosis. She further testified that her disabilities prevented her from working or managing her financial affairs.

### DISCUSSION

The general statute of limitations for filing a refund claim is set forth in R&TC section 19306. Under that statute, 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.) R&TC section 19316 provides, however, that the statute of limitations periods set forth in R&TC section 19306 are “suspended” during any period in which the taxpayer is “financially disabled.”

Appellant has not disputed that under the applicable time periods within R&TC section 19306, the claims for refund would be barred if she were not financially disabled. Appellant’s claim on appeal is that the statute of limitations was tolled during the relevant time periods based on her financial disability.

A taxpayer is considered financially disabled if: (1) the “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 to act on the taxpayer’s behalf in financial matters. (R&TC, § 19316(a) & (b).) A taxpayer bears the burden of establishing a financial disability by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) & (c).) To demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit from a physician that explains the nature and duration of the taxpayer’s physical or mental impairments. (*Appeal of Estate of Gillespie*, 018-OTA-052P.)

Appellant provided affidavits from Drs. Anderson and Schafer in support of her testimony that she was financially disabled from April 1, 2007, through May 1, 2019. At the oral hearing, FTB stated that it “[did] not question the veracity of appellant’s documented physical

ailments.” FTB asserted, however, that each of the affidavits did not meet the requirements of an affidavit for purposes of R&TC section 19316 because each affidavit contained a date inconsistency. Specifically, FTB noted that Dr. Anderson stated in his affidavit that the time period during which appellant was prevented from managing her financial affairs was from April 1, 2007, through May 1, 2019, which post-dated the signature date. As for Dr. Schafer’s affidavit, FTB noted that appellant initially submitted an affidavit from Dr. Schafer that was signed on March 19, 2019, but which failed to indicate the time period during which appellant was prevented from managing her financial affairs. FTB further noted that appellant later submitted another affidavit from Dr. Schafer that appeared to duplicate the earlier affidavit and was also signed on March 19, 2019, but which indicated the time period during which appellant was prevented from managing her financial affairs was from April 1, 2007, through May 1, 2019, with the stated end date being more than a month after Dr. Schafer signed the affidavit. Based on the foregoing dating inconsistencies, FTB took the position that each affidavit did not meet the requirements of an affidavit for purposes of R&TC section 19316.

We find that each affidavit is credible and meets the requirements of R&TC section 19316, despite the date inconsistencies.<sup>3</sup> We also find that each affidavit is supported by appellant’s testimony, which we find to be credible, and unrebutted. Dr. Anderson described appellant’s back pain as “severe” and indicated that there were times when appellant could not get into her car to drive and occasions when appellant had difficulty traveling to meet with her accountant. Both Drs. Anderson and Schafer indicated that appellant suffered from several other disabling conditions. According to both doctors, appellant’s physical impairments resulted in appellant being unable to manage her financial affairs from April 1, 2007, through a portion of the 2019 tax year.<sup>4</sup> We find no reason to question the diagnoses and affidavits of the two physicians. When viewed in the context of appellant’s serious medical disabilities, which FTB does not dispute, the alleged date inconsistencies raised by FTB are minor and immaterial.<sup>5</sup>

---

<sup>3</sup> We note that there are many reasons a doctor might place a future end date on a notice indicating the duration of a patient’s condition, and we do not second guess that professional decision.

<sup>4</sup> Regardless of any date discrepancy, both physicians’ affidavits cover the relevant time period; appellant filed her amended tax returns on April 15, 2017.

<sup>5</sup> The affidavits provided contact information for both doctors, but there is no indication that FTB sought to contact the doctors regarding any concerns FTB may have about the dates in the documents.

The exception in R&TC section 19316 does not apply, however, if a spouse or other person was legally authorized to act on appellant's behalf in financial matters. (R&TC, § 19316(b)(2).) The statute does not define the term "legally authorized"; however, only authorized persons may file a return on behalf of another, for example, a spouse. When an individual is unable to file a required return, such return "shall be made by a duly authorized agent, his or her committee, guardian, fiduciary, or other person charged with the care of the person or property of the individual." (R&TC, § 18505.6.) The meaning of the word "authority" is clear, and thus does not require further statutory interpretation methods, such as analyzing legislative history. (*Stauffer v. Internal Revenue Service* (1st Cir. 2019) 939 F.3d 1 (*Stauffer*).) Black's Law Dictionary defines "authority" as "[t]he official right or permission to act, esp. to act legally on another's behalf; esp., the power of one person to affect another's legal relations by acts done in accordance with the other's manifestations of assent; the power delegated by a principal to an agent." (Black's Law Dict. (11th ed. 2019) Westlaw.) This definition matches the language in R&TC section 19316(2)(B) and requires that a person be designated to *legally* act on another's behalf.<sup>6</sup> Courts that have addressed the question of whether someone was authorized to file tax returns on behalf of another have consistently held that persons holding powers of attorney with respect to the taxpayer's financial affairs are "authorized" representatives. (*Stauffer, supra*; *Plati v. U.S.* (Fed.Cl. 2011) 99 Fed.Cl. 634; *Bova v. U.S.* (Fed.Cl. 2008) 80 Fed.Cl. 449.) No evidence was presented that shows that a person was designated, by power of attorney, or by other means, to legally act on appellant's behalf during the relevant time frame.

FTB asserted at the oral hearing that appellant was not financially disabled, as evidenced by the facts that she (1) filed timely tax returns for tax years 2006 through 2017, (2) hired a tax professional to help her file amended California returns for tax years 2007 through 2011, and (3) filed numerous documents in relation to the current appeal, including multiple affidavits. Appellant testified that she managed to do some things when she had the assistance of her daughter who lived in another town. Appellant's seeking the aid of her daughter from time to time does not rise to the level of legal authorization for the daughter to act on appellant's behalf. There is no evidence that appellant's daughter or any legal professional was legally authorized to

---

<sup>6</sup>The federal statute that allows for tolling of the statute of limitations defines "financial disability" similarly to California's statute, with the main difference being California's insertion of the word "legally" before "authorized." (See Int. Rev. Code, § 6511(h); cf. R&TC, § 19316(b)(2).)

act on appellant's behalf, such as under a power of attorney. Moreover, the evidence shows that appellant had no spouse to act on her behalf. Each of appellant's original and amended returns reported a single filing status, showing that she was unmarried, which FTB does not dispute. On FTB Form 1564, appellant reported that no spouse or any other person was authorized to act on her behalf in financial matters. Appellant testified that the only assistance she received was to get rides and assistance with paperwork when possible. No evidence was presented showing that appellant had a guardian, fiduciary, or other person charged with the care of appellant's person or property. We conclude that appellant did not have any person who was legally authorized to manage her financial affairs.


In summary, we find that the doctors' affidavits (along with appellant's testimony and Dr. Anderson's statements in the letter) establish by a preponderance of the evidence that appellant was financially disabled from April 1, 2007, (as indicated in each affidavit) through at least March of 2019 (which is the month when each doctor signed their respective affidavits under penalty of perjury). Accordingly, for each tax year, we find that the four-year statute of limitations period (in addition to the one-year statute of limitations period) set forth in R&TC section 19306 was suspended for a sufficient length of time, such that appellant's claims for refund for tax years 2007 through 2011 were filed timely.

HOLDING

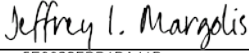
Appellant established that her financial disability tolled the statute of limitations to file claims for refund for taxable years 2007 through 2011, and the claims were filed timely.


DISPOSITION

FTB's actions denying appellant's claims for refund for tax years 2007 through 2011 are reversed.

DocuSigned by:  
  
0CC8C6ACCC6A44D  
Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
6E9822FBB1B441B  
Jeffrey I. Margolis  
Administrative Law Judge

DocuSigned by:  
  
7B17E958B7C14AC  
Amanda Vassigh  
Administrative Law Judge

Date Issued: 7/1/2020