

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

In the Matter of the Appeal of:

**C. SEALS**) OTA Case No. 19105388  
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)**OPINION**

Representing the Parties:

For Appellant:

C. Seals

For Respondent:

Kenneth A. Davis, Tax Counsel IV

For Office of Tax Appeals:

Michelle Huh, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Seals (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$2,215.19 for the 2010 taxable year, \$1,823.57<sup>1</sup> for the 2011 taxable year, \$508 for the 2012 taxable year, and \$523 for the 2013 taxable year.

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

**ISSUE**

Whether appellant's claims for refund for the 2010 through 2013 taxable years were filed within the statute of limitations for the respective taxable years.

**FACTUAL FINDINGS****2010 Taxable Year**

1. Appellant did not timely file a 2010 California income tax return.
2. Subsequently, FTB received information from third parties that appellant earned

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<sup>1</sup> Appellant's claim for refund for the 2011 taxable year was \$1,827.30; however, FTB refunded \$3.73 with respect to this claim for refund. Therefore, the amount in dispute on appeal for the 2011 taxable year is \$1,823.57 (\$1,827.30 - \$3.73).

sufficient income that might require appellant to file a California tax return. On January 12, 2012, FTB issued a Demand for Tax Return (Demand) for the 2010 taxable year. The Demand required appellant to respond by providing evidence that he already filed his 2010 California income tax return, explaining why appellant did not have a filing obligation for the 2010 taxable year, or filing appellant's 2010 California income tax return.

3. Appellant did not respond to the Demand, and FTB issued a Notice of Proposed Assessment (NPA) that estimated appellant's income for the 2010 taxable year based on the information received from the third parties. The NPA listed a proposed tax amount of \$904, a late-filing penalty of \$226, a notice and demand penalty of \$363.25, and a filing enforcement fee of \$88, plus interest.
4. Appellant did not protest the NPA, and it became a final assessment on May 11, 2012.
5. From May 5, 2014, through August 4, 2014, appellant made payments totaling \$1,762.44 for his 2010 taxable year liabilities.
6. On July 9, 2018, appellant filed his 2010 California income tax return, reporting a tax liability of \$1 and a withholding credit of \$488. The 2010 return did not include any information regarding appellant's previous payments from May 5, 2014, through August 4, 2014, and only requested a refund of the withholding credit of \$487.
7. FTB accepted appellant's 2010 return and treated the return as a claim for refund for all the payments made with respect to the 2010 taxable year. Because the statute of limitations had expired, FTB denied appellant's claim for refund of the withholding credit, plus the amounts paid.<sup>2</sup>
8. This timely appeal followed.

#### 2011 Taxable Year

9. Appellant did not timely file his 2011 California income tax return.
10. Subsequently, FTB received information that appellant earned sufficient income that may have required him to file a California tax return. On January 4, 2013, FTB issued a Demand for the 2011 taxable year. The Demand required appellant to respond by

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<sup>2</sup> The withholding credit of \$487 plus the payments of \$1,762.44 equals a total of \$2,249.44. However, FTB decreased these payments by a \$0.25 notice and demand penalty and a \$34 installment agreement fee, which are not in dispute in this appeal. Therefore, the total claim for refund for the 2010 taxable year is \$2,215.19 (\$2,249.44 - \$0.25 - \$34).

providing evidence that he already filed his 2011 California income tax return, explaining why appellant did not have a filing obligation for the 2011 taxable year, or filing appellant's 2011 California income tax return.

11. Appellant did not respond to the Demand for the 2011 taxable year, and FTB issued an NPA estimating his income for the 2011 taxable year. The NPA listed a proposed tax of \$700, a late-filing penalty of \$175, a notice and demand penalty of \$299, and a filing enforcement fee of \$82, plus interest.
12. Appellant did not protest the NPA for the 2011 taxable year, and it became a final assessment on May 10, 2013.
13. From February 15, 2014, through October 3, 2014, appellant made total payments of \$1,361.57 toward his 2011 tax liability. In addition, on February 5, 2018, appellant made a payment of \$3.72 toward his 2011 tax liability.
14. On July 9, 2018, appellant filed his 2011 California income tax return, which reported a tax liability of \$0 and a withholding credit of \$496. The 2011 return did not include any information regarding the previous payments made by appellant from February 15, 2014, through February 5, 2018, and only requested a refund of the withholding credit of \$496.
15. FTB accepted appellant's 2011 return as filed and treated it as a claim for refund for all the payments made with respect to the 2011 taxable year. Based on the statute of limitations, FTB allowed a refund of the February 5, 2018 payment of \$3.72 but denied the claim for refund as to the withholding credit and the remaining payments.<sup>3</sup>
16. This timely appeal followed.

#### 2012 Taxable Year

17. On July 9, 2018, appellant untimely filed his 2012 California income tax return, which reported a tax liability of \$0 and a withholding credit of \$508. Accordingly, appellant requested a refund of \$508.
18. FTB accepted appellant's 2012 return as filed and treated it as a claim for refund. However, based on the statute of limitations, FTB denied the claim for refund.
19. This timely appeal followed.

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<sup>3</sup> The withholding credit of \$496 plus the remaining payments of \$1,361.57 equals a total of \$1,857.57. However, FTB decreased these amounts by a \$34 installment agreement fee, which is not in dispute in this appeal. Therefore, the total claim for refund for the 2011 taxable year is \$1,823.57 (\$1,857.57 - \$34).

2013 Taxable Year

20. On July 9, 2018, appellant untimely filed his 2013 California income tax return, which reported a tax liability of \$0 and a withholding credit of \$523. Accordingly, appellant requested a refund of \$523.
21. FTB accepted appellant's 2013 return as filed and treated it as a claim for refund. However, based on the statute of limitations, FTB denied the claim for refund.
22. This timely appeal followed.

DISCUSSION

Under the applicable statute of limitations, 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(a).) “A taxpayer’s failure to file a claim for refund within the statute of limitations, for any reason, bars [the taxpayer] from later claiming a refund.” (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Without a timely refund claim, FTB does not have the statutory authorization to refund amounts paid, and the Office of Tax Appeals does not have the statutory authorization to require FTB to do so. (*Appeal of Estate of Gillespie*, *supra*.) Furthermore, the United States Supreme Court has concluded that the untimely filing of a claim for refund bars a suit for refund regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*United States v. Dalm* (1990) 494 U.S. 596.)

Here, there is no dispute that appellant did not timely file his California income tax returns for the 2010 through 2013 taxable years. Therefore, the first timeframe in R&TC section 19306(a)—i.e., four years from the date the return is filed, if filed within the extended due date—is inapplicable to this appeal. Furthermore, there is no dispute that appellant filed all the claims for refund for the 2010 through 2013 taxable years on July 9, 2018. These taxable years had the following income tax return due dates: April 15, 2011, for the 2010 taxable year; April 15, 2012, for the 2011 taxable year; April 15, 2013, for the 2012 taxable year; and April 15, 2014, for the 2013 taxable year. Four years from these due dates would result in statute of limitations deadlines of April 15, 2015, for the 2010 taxable year; April 15, 2016, for the 2011 taxable year; April 15, 2017, for the 2012 taxable year; and April 15, 2018, for the 2013 taxable

year. The July 9, 2018 claims for refund, however, were not filed within any of these deadlines. Thus, the claims for refund were not timely under the second timeframe outlined in R&TC section 19306(a).

With respect to appellant's payments, there is no dispute that the only payment made to FTB from the time period July 10, 2017, through July 9, 2018 (one year prior to the date of the claims for refund), was a payment of \$3.72 on February 5, 2018, which FTB has refunded to appellant with applicable interest. The remaining payments were all made prior to July 10, 2017, and are untimely pursuant to R&TC section 19306(a). Based on the foregoing, we find that the claims for refund were not filed within any of the statute of limitations deadlines for the remaining amounts in dispute and the corresponding taxable years at issue in this appeal.

Although appellant argues that he is a Vietnam veteran who is considered 100-percent disabled due to his service in a war, appellant has not explained how his disability prevented him from filing timely claims for refund. Instead, appellant explains that stress related to family problems and flashbacks of war moments prevented him from focusing on his tax situation. Based on these arguments, it appears that appellant is arguing that he was financially disabled and is requesting that the statute of limitations periods be suspended to allow for the claims for refund to be considered timely filed.

R&TC section 19316(a) allows the suspension of the running of any period specified in R&TC section 19306 if FTB finds that an individual taxpayer is "financially disabled." A financially disabled taxpayer is an individual who "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." (R&TC, § 19316(b)(1).) A taxpayer shall not be considered financially disabled for any period when the taxpayer's spouse or any other person is legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(2).)

To demonstrate the existence of a financial disability, the taxpayer must submit a signed affidavit from a physician which explains the nature and duration of the taxpayer's physical or mental impairments. (*Appeal of Estate of Gillespie, supra*; see also R&TC, § 19316(a).) In addition, the taxpayer must show that the period of financial disability overlaps with the relevant limitations period. (*Appeal of Meek* (2006-SBE-01) 2006 WL 864344.)

Appellant has not submitted the necessary documentation to demonstrate that he was “financially disabled” during any portion of the applicable time periods in this appeal. Therefore, we conclude that appellant was not “financially disabled” and the statute of limitations was not suspended.

### HOLDING

Appellant’s claims for refund for the 2010 through 2013 taxable years are barred by the statute of limitations.

### DISPOSITION

FTB’s action in partially granting appellant’s claim for refund of \$3.72 for the 2011 taxable year but otherwise denying the claims for refund for the 2010, 2011, 2012, and 2013 taxable years is sustained.

DocuSigned by:  
*Daniel Cho*  
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Daniel K. Cho  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge

Date Issued: 7/2/2020