

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

In the Matter of the Appeal of:

**B. WEISS**) OTA Case No. 19014252  
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)**OPINION**

Representing the Parties:

For Appellant:

Brandon Yee, Tax Appeals Assistance  
Program (TAAP)

For Respondent:

Brian Werking, Tax Counsel

For Office of Tax Appeals:

Charles Chan, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324,<sup>1</sup> B. Weiss (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$913.40 for the 2012 taxable year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. Appellant did not file a California tax return for 2012.
2. FTB received information suggesting that appellant received sufficient interest, dividend, and sale of stock income in 2012 to require him to file a California tax return.

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<sup>1</sup> All section references are to the California Revenue and Taxation Code that is operative for the 2012 taxable year.

3. FTB obtained information from the National Change of Address database showing that in July 2014, appellant's address of record was changed to a location in Laguna Niguel, California.
4. FTB sent appellant a Request for Tax Return to his last known address in Laguna Niguel, California. The letter noted that FTB had obtained information indicating that appellant may have received a sufficient amount of interest, dividend, and sale of stock income to trigger a filing requirement for the 2012 taxable year.
5. When FTB received no response, it issued a Notice of Proposed Assessment (NPA) to appellant's last known address, imposing a tax liability of \$484 and a late-filing penalty of \$135, plus applicable interest. The NPA became final when no protest was lodged.<sup>2</sup>
6. Subsequently, FTB sent appellant a Statement of Tax Due and an Income Tax Due Notice to his last known address.
7. FTB then began collection actions and received payment of \$913.40 from appellant's bank account on December 2, 2016.
8. On October 3, 2018, FTB received appellant's claim for refund for the 2012 taxable year.<sup>3</sup>
9. On October 29, 2018, FTB denied the claim for refund because the statute of limitations had expired.
10. On his application for financial disability (FTB Form 1564), appellant's physician signed an affidavit indicating that appellant's medical condition and procedures he had undergone in July 2017 would not have prevented appellant from managing his financial affairs. Appellant's physician also indicated that the medical condition was not expected to result in death, or last for a continuous period of more than 12 months.

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<sup>2</sup> The proposed tax in the NPA was estimated using interest income of \$2,458.00 (reported on IRS Form 1099-INT or 1099-OID), dividend income of \$2,196.00 (reported on IRS Form 1099-DIV or 1099-PATR), and sale of stock income of \$24,619.32 (percentage of proceeds reported on IRS Form 1099-B), as described in the income reference sheet of the NPA.

<sup>3</sup> Appellant and his spouse signed the form on September 12, 2018. His spouse also signed the area on this form indicating she had power of attorney.

## DISCUSSION

Generally, no refund can be allowed unless a taxpayer files a timely claim for refund. (R&TC, § 19306; *Appeal of Gillespie*, 2018-OTA-052P.) Except as provided by law, the statute of limitations for a claim for refund is not extended or suspended by ill health or other unfortunate circumstances.<sup>4</sup> (*Appeal of Gillespie*, *supra*.)

The statute of limitations on a claim for refund is stated in R&TC section 19306. Under this provision, the last day to file a 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.

Appellant did not file a California tax return for 2012, so the first category does not apply. For the second category, the due date for a 2012 return was April 15, 2013, which would require a claim for refund be filed on or before April 15, 2017. For the third category, the overpayment occurred when FTB took payment from appellant's bank account, on December 2, 2016, which would require a claim for refund be filed on or before December 2, 2017. Appellant's claim for refund was received on October 3, 2018, and so it falls outside the date range for a timely claim under both the second and third categories. Therefore, appellant's claim falls outside the statute of limitations.

It is well-settled law that "the statute of limitations on claims for refund is explicit and must be strictly construed, without exception." (*Appeal of Meek* (2006-SBE-001) 2006 WL 864344, citing *Appeal of Avril* (78-SBE-072) 1978 WL 3545, and *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) In *United States v. Brockamp* (1997) 519 U.S. 347, the United States Supreme Court held that the statute of limitations is not subject to equitable tolling. (See also *Reynoso v. United States* (9th Cir. 2012) 692 F.3d 973, 982.) In short, "a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date." (*Appeal of Matthiessen*, *supra*.)

However, the statute of limitations can be suspended if a taxpayer is "financially disabled." (R&TC, § 19316.) A taxpayer is financially disabled "if that 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

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<sup>4</sup> As discussed later in this opinion, the statute of limitations can be suspended (and thus the final deadline can change) as provided in R&TC section 19316.

continuous period of not less than 12 months.” (R&TC, § 19316(b)(1).) The exception to this definition is if an individual taxpayer has someone else legally authorized to act on his or her behalf in financial matters during that period. (R&TC, § 19316(b)(2).) This period must overlap with the original statute of limitations. (*Appeal of Meek, supra.*)

R&TC section 19316(a) provides that financial disability “shall be established in accordance with those procedures and requirements specified by the Franchise Tax Board.” In response, FTB published Form 1564 and its accompanying instructions. Those instructions require an affidavit from a physician as to the nature and duration of the taxpayer’s physical or mental impairment. That affidavit also must state that the taxpayer was unable to manage his or her financial affairs. Appellant did in fact submit a physician’s affidavit, but his physician opined that the impairment would not prevent appellant from managing his financial affairs, the impairment was not terminal, and was not expected to last continuously for more than 12 months. Therefore, appellant has not shown that he was “financially disabled” for purposes of R&TC section 19316.

Appellant raises issues of notice in his brief, specifically regarding actual notice of FTB’s actions. He states in part that he has lived in Australia most of his life and his niece managed his tax obligations until her mother passed away. However, by mailing notices to appellant’s last known address in Laguna Niguel, FTB provided appellant with adequate notice, even though he asserted he never received any tax notices. (See *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474; *Appeal of Johnston* (83-SBE-238) 1983 WL 15609.)


While we are sympathetic to appellant’s contentions, there is no legal basis for us to extend the statute of limitations. Therefore, we must sustain FTB’s action.

HOLDING

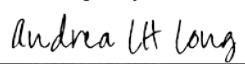
Appellant's claim for refund is barred by the statute of limitations.

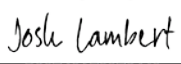
DISPOSITION

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

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Tommy Leung  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
  
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Josh Lambert  
Administrative Law Judge

Date Issued: 8/19/2020