

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19044642
T. NGUYEN)
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OPINION

Representing the Parties:

For Appellant: Jocelyn M. Mills
Tax Appeals Assistance Program (TAAP)

For Respondent: Gi Nam, Tax Counsel

For Office of Tax Appeals: Tyler Zepp, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Nguyen (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$15,198.50 and \$743.75 plus applicable interest for the 2013 and 2014 tax years, respectively.

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

ISSUES

1. Whether appellant’s claim for refund for the 2013 tax year is barred by the statute of limitations.
2. Whether appellant has demonstrated reasonable cause to abate the late filing penalties for the 2013 and 2014 tax years.
3. Whether appellant has demonstrated entitlement to interest abatement for the 2013 and 2014 tax years.

FACTUAL FINDINGS

1. FTB received information that, for the 2013 and 2014 tax years, appellant received sufficient taxable income to trigger a filing requirement, but did not file tax returns for either tax year.
2. FTB issued a Demand for Tax Return to appellant for the 2013 and 2014 tax years.
3. On August 30, 2016, appellant filed California Resident Income Tax Returns for the 2013 and 2014 tax years. Along with the returns, appellant made payments to satisfy the balance due for both the 2013 and 2014 tax years.
4. Since the returns were filed late, FTB imposed late filing penalties of \$15,198.50 and \$743.75 for the 2013 and 2014 tax years, respectively.
5. On September 27, 2016, appellant satisfied the balance due on the late filing penalties by making payments for both the 2013 and 2014 tax years.
6. On March 1, 2019, FTB received appellant's claims for refund dated February 11, 2019, for the 2013 and 2014 tax years. FTB denied the claims for refund for both tax years with letters dated March 22, 2019.
7. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellant's claim for refund for the 2013 tax year is barred by the statute of limitations.

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may 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 pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file), or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Avril* (78-SBE-072) 1978 WL 3545.) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896

F.2d 218, 222.) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant did not timely file a 2013 return. Therefore, under the four-year statute of limitations, appellant was required to file a refund claim no later than April 15, 2018, which is four years from the original due date of that return. September 27, 2017, is one year from the date of the alleged overpayment on September 27, 2016. Hence, the claim for refund for 2013 must have been filed no later than April 15, 2018, to meet the statute of limitations requirement.

Appellant asserts in his opening brief that he mailed claims for refund during October 2016, May 2017, and May 2018. Both the 2016 and 2017 mailings would fall within the statute of limitation; however, appellant has not provided any evidence, such as certified mail receipts, that either claim was sent. Furthermore, FTB has no record of receiving claims for refund around the above dates. The claim for refund that appellant asserts was mailed in May 2018 would clearly be outside the one-year statute, regardless of any proof of mailing (which we do not have in the record, as mentioned above). Therefore, appellant's claim for refund for 2013 fall outside the statute of limitations.

In his reply brief, appellant asserts that his claim for refund for the 2013 tax year is timely due to the financial disability exception. Pursuant to R&TC section 19316, the time for filing a claim for refund may be tolled during the period in which 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. (R&TC, § 19316(b)(1) & (2).) The taxpayer bears the burden of establishing financial disability by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) & (c).)

Appellant contends that the terminal illness of his father establishes appellant's financial disability for purposes of tolling the statute of limitations for the 2013 tax year. While we are sympathetic to appellant's circumstance and to his father's illness, the illness of appellant's father is not relevant to establishing appellant's financial disability regarding his late-filed claim

for refund. Appellant himself must meet the criteria of R&TC 19316, meaning appellant had to be the one who was sick.

Since appellant has not alleged any personal illness, he has failed to demonstrate that he was financially disabled for the necessary time period to toll the statute of limitations for his late 2013 claim for refund. Therefore, appellant's claim for refund for the 2013 tax year is barred by the statute of limitations.

Issue 2 - Whether appellant has demonstrated reasonable cause to abate the late filing penalty for the 2014 tax year.

R&TC section 19131 imposes a late filing penalty on taxpayers who fail to file a return by either the due date or the extended due date unless the taxpayer shows that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The late filing penalty is five percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of twenty five percent of the tax. (*ibid.*) Appellant does not dispute that he filed his tax returns late nor does he dispute that the penalties were properly imposed and computed. Rather, appellant asserts that he has demonstrated reasonable cause for the late filing of his 2014 tax return.

When FTB imposes a late filing penalty, the penalty is presumed to be correct. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to prove that he had reasonable cause. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.) Appellant needs to provide credible and competent evidence to support his claim of reasonable cause. (*Appeal of Walshe* (75-SBE-073) 1975 WL 3557.) To show reasonable cause, appellant must establish that the failure occurred despite appellant's exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) Appellant must prove that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) Moreover, when there are difficulties that simply cause a taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Loew's San Francisco Hotel Corp.* (73-SBE-050) 1973 WL 2783; *Appeal of Orr* (68-SBE-010) 1968 WL 1640.)

For the reasons stated in the first issue above, appellant's request for abatement of the late filing penalty for the 2013 tax year is barred by the statute of limitations and, therefore, the issue of reasonable cause is moot for that tax year. For the 2014 tax year, appellant asserts that being

the sole caretaker of his ailing father was a continuous obstacle to filing his taxes on time, which establishes reasonable cause for late filing penalty abatement. However, when reviewing appellant's tax information it is evident that, during the time period in question, appellant managed to earn sizable amounts of income as a private contractor as well as engage in significant stock transactions. In addition, appellant also earned a substantial amount of wage income. All this activity shows that appellant chose to pursue other endeavors instead of timely filing his tax returns. Therefore, appellant has not demonstrated reasonable cause to abate the late filing penalty for the 2014 tax year.

Issue 3 - Whether appellant has demonstrated that he is entitled to interest abatement for the 2013 and 2014 tax years.

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) "Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state." (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (*Ibid.*) To obtain relief from interest, appellant must qualify under the R&TC provisions of sections 19112, 19104, or 21012. R&TC section 21012 is not relevant here, because FTB did not provide appellant with any written advice.

R&TC section 19112 states that interest may be waived by FTB if appellant can show that his inability to pay was due to extreme financial hardship caused by a significant disability or catastrophic circumstance. The relevant statute gives FTB the discretion to decide upon whether appellant has made a showing of extreme financial hardship. Therefore, we must address whether we have jurisdiction to decide whether FTB abused its discretionary power. An administrative agency's authority to act is of limited jurisdiction and it "has no powers except such as the law of its creation has given it." (*Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 105, quoting *Conover v. Board of Equalization* (1941) 44 Cal.App.2d 283, 287.) There is no provision in R&TC section 19112 which would allow Office of Tax Appeals (OTA) to review FTB's interest determinations based on a claim of financial hardship.

OTA has jurisdiction to determine whether FTB's failure to abate interest under R&TC section 19104 was an abuse of discretion; if so, we may order an abatement of interest. (R&TC, § 19104(b)(2)(B); *Appeal of Teichert* (99-SBE-006) 1999 WL 1080256.) Both appellant's 2013

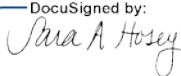
and 2014 California tax payments were late, neither of which was fully paid until September 27, 2016. Due to appellant’s late payment of tax, FTB is required to charge interest on the untimely payment. Although appellant contends that FTB’s assessment of interest was improper, appellant has provided no facts, reasons, or arguments to show that FTB’s interest assessment was improper or incorrect. Therefore, we find no grounds to support abatement of interest.

HOLDINGS

1. Appellant’s claim for refund for the 2013 tax year is barred by the statute of limitations.
2. Appellant has not demonstrated reasonable cause to abate the late filing penalty for the 2014 tax year.
3. Appellant has not demonstrated entitlement to interest abatement for the 2013 and 2014 tax years.

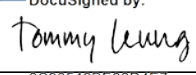
DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

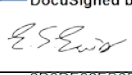
DocuSigned by:


 Sara A. Hosey
 Administrative Law Judge

We concur:

DocuSigned by:


 Tommy Leung
 Administrative Law Judge

DocuSigned by:


 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 7/29/2020