

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. MITCHEM

) OTA Case No. 19044666
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OPINION

Representing the Parties:

For Appellant: M. Mitchem¹

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Mitchem (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$6,919 for the 2010 taxable year, \$4,749 for the 2011 taxable year, \$3,700 for the 2012 taxable year, and \$2,739 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

Are appellant’s claims for refund barred by the statute of limitations, and if so, was the statute of limitations tolled due to financial disability?

¹ Appellant filed her initial Request for Appeal. Appellant was subsequently assigned a representative from the Tax Appeals Assistance Program (TAAP); however, the representative filed no briefing or documents on appellant’s behalf. After TAAP withdrew their representation, the Office of Tax Appeals contacted appellant directly, giving her an opportunity to file an additional brief, but appellant filed no additional briefing or documents.

FACTUAL FINDINGS

1. On November 7, 2018, appellant filed a 2010 tax return claiming a refund due to her of \$6,919. The overpayment was due to tax withholdings for the 2010 taxable year, applied effective April 15, 2011.
2. On November 7, 2018, appellant filed a 2011 tax return claiming a refund due to her of \$4,749. The overpayment was due to withholdings for the 2011 taxable year, applied effective April 15, 2012.
3. On November 8, 2018, appellant filed a 2012 tax return claiming a refund due to her of \$3,700. The overpayment was due to withholdings for the 2012 taxable year, applied effective April 15, 2013.
4. On November 7, 2018, appellant filed a 2013 tax return claiming a refund due to her of \$2,793. The overpayment was due to withholdings for the 2013 taxable year applied effective April 15, 2014.
5. In notices issued January 23, 2019, FTB denied each of appellant's claimed refunds based on the expiration of the statute of limitations.
6. Appellant timely appealed FTB's denials "under the mental health and health appeals basis for judgment."

DISCUSSION

R&TC section 19306(a) provides in part that no credit or refund shall be allowed unless a claim for refund is filed within one of these three periods: (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 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, citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249.)

Because appellant did not timely file her 2010 through 2013 original returns, the first period under R&TC section 19036 does not apply. Under the second applicable four-year statute of limitations, appellant was required to file refund claims no later than April 15, 2015, for 2010, April 15, 2016, for 2011, April 15, 2017, for 2012, and April 15, 2018, for 2013, which is four years from the original due date of that return. Appellant filed the returns requesting refunds on November 7 or 8, 2018, after each of those periods had expired. Under the alternative one-year statute of limitations, appellant filed claims for refund well after April 15, 2012, for 2010, April 15, 2013, for 2011, April 15, 2014, for 2012, and April 15, 2015, for 2013 (one year from the most recently credited payment). Therefore, under R&TC section 19306(a), the statute of limitations for filing a timely refund claim expired prior to appellant's claims for refunds.

However, 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) and (2).)


Taxpayers bear the burden of establishing financial disability by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) and (c).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Appellant has provided nothing on appeal other than her statement that she had mental health issues. In an additional briefing request, appellant was asked to provide documentation to support her claim of financial disability, but she did not respond. Nothing in the record indicates whether appellant's alleged disability exceeded 12 months or whether there was a spouse or other person legally authorized to act on appellant's behalf in managing her financial affairs. To the contrary, appellant was reluctant to provide any medical documentation to support her claim of financial disability. Appellant has failed to establish that she had a financial disability that would toll the statute of limitations for filing a refund claim.

HOLDING

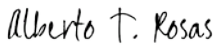
The statute of limitations expired before appellant filed her claims for refund for taxable years 2010 through 2013. Appellant failed to establish that the statute of limitations should be tolled due to a financial disability.


DISPOSITION

FTB’s denials of appellant’s claims for refund for taxable years 2010 through 2013 are sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 5/20/2020