

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. MANDOSIA

) OTA Case No. 19115481
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OPINION

Representing the Parties:

For Appellant:

G. Mandosia

For Respondent:

Joel M. Smith, Tax Counsel III

For Office of Tax Appeals:

Andrew Pence, Graduate Student Assistant

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Mandosia (appellant) appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$3,747.90 for the 2004 tax year.

We decide the matter based on the written record because appellant waived her right to an oral hearing.

ISSUE

Does the statute of limitations bar appellant’s claim for refund?

FACTUAL FINDINGS

1. Appellant did not file a timely return for the 2004 tax year.
2. Respondent obtained information indicating that appellant may have had sufficient income in 2004 to require appellant to file an income tax return. Accordingly, respondent sent appellant a Request for Tax Return on December 27, 2005, instructing appellant to respond by February 1, 2006, by filing a 2004 return, providing a copy of a previously filed 2004 return, or explaining why she was not required to file a 2004 return.

3. When appellant did not respond to the Request for Tax Return, respondent issued a Notice of Proposed Assessment (NPA) for the 2004 year on March 6, 2006. The NPA proposed a tax of \$2,589 and imposed a late filing penalty of \$647.25, plus interest.
4. Appellant failed to timely protest the NPA by the deadline of May 5, 2006. As a result, the NPA became a final assessment.
5. Respondent received payment of \$3,886.90 on September 4, 2007.
6. Appellant filed a 2004 tax return on June 19, 2009, reporting no tax due. Respondent accepted the return as filed, resulting in a \$3,747.90 overpayment.¹ This return also functioned as appellant's first claim for refund for the 2004 tax year.
7. By correspondence dated July 9, 2019, appellant submitted a second claim for refund for the 2004 tax year.
8. On September 11, 2019, respondent denied appellant's claim for refund on the ground that it was barred by the statute of limitations. This timely appeal followed.

DISCUSSION

Under R&TC section 19306, a valid claim for refund must be filed within: (1) four years from the date the return was 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. The language of R&TC section 19306 must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P;² *Appeal of Avril* (78-SBE-072) 1978 WL 3545.) While the result, including denials of claims when the overpayment is not disputed, may seem harsh, the apparent harshness of fixed deadlines is deemed an acceptable consequence of a clearly stated legal obligation. (*Appeal of Cornbleth, supra*; *Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.) The untimely filing of a claim bars a suit for refund, regardless of whether the tax is alleged to have been collected erroneously, illegally, or wrongfully. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.)

We must determine whether appellant's earliest claim, filed on June 19, 2009, was timely under any of the prescribed periods. Because appellant did not file a 2004 tax return prior to the

¹ The liability included a collection cost recovery fee of \$126 and a lien fee of \$13, neither of which is refundable. (R&TC § 19254; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.)

² Precedential opinions of the Office of Tax Appeals (OTA) may be found on OTA's website at: <https://ota.ca.gov/opinions>.

due date, the first limitations period prescribed by R&TC section 19306 is inapplicable. To be timely under the second limitations period, appellant would have had to file a claim for refund by April 15, 2009, more than two months prior to the date of appellant's earliest claim. Under the last applicable limitations period, appellant would have had to file a claim for refund within one year from the date of the overpayment, or by September 4, 2008. Accordingly, we conclude that appellant's June 19, 2009 claim for refund was not timely filed. Consequently, the claim is barred.

Appellant offers an explanation for the untimely filing and states that respondent indicated that it would mail the refund. Appellant asserts that several deaths and illnesses in her family made it difficult for her to attend to personal matters since 2009 and prevented her from pursuing her refund before the correspondence dated July 9, 2019. Appellant also indicates that she brought her return to "the Los Angeles Office" and that the person behind the counter had indicated that "the State" would mail the funds that had been taken out of her bank account.

We are sympathetic to appellant's difficult personal circumstances. However, there is no "reasonable cause" exception to the statute of limitations.³ (*Appeal of the Estate of Gillespie*, 2018-OTA-052P; *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Furthermore, there are several reasons why the oral statements that appellant attributes to respondent cannot provide a basis for relief, not the least of which is the fact that the claim was already barred when appellant filed her return. It is undisputed that appellant's claim for refund was filed outside the statute of limitations, and the statutory period cannot be extended for appellant's personal circumstances. Therefore, respondent properly denied appellant's claim.


³ R&TC section 19316 provides a limited exception by suspending the statute of limitations during any period in which a taxpayer is "financially disabled." A taxpayer is "financially disabled" if unable to manage her financial affairs due to 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(a)-(b)(1).) Appellant does not contend, and the evidence does not show, that this limited exception applies.

HOLDING


The statute of limitations bars appellant’s claim for refund.

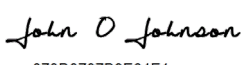
DISPOSITION

Respondent’s action denying appellant’s claim for refund for the 2004 tax year is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:

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Sheriene Anne Ridenour
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 10/7/2020