

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19054731
F. BAHENA AND)
T. BAHENA)
_____)

OPINION

Representing the Parties:

For Appellant: F. Bahena
T. Bahena¹

For Respondent: Joel Smith, Tax Counsel III

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Bahena and T. Bahena (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$11,534.25 for the 2006 tax year.

Office of Tax Appeals Administrative Law Judges Elliott Scott Ewing, Richard Tay, and Andrew J. Kwee held an oral hearing via teleconference for this matter on November 17, 2020.² At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Whether appellants filed their claim for refund before the expiration of the statute of limitations.

¹ Appellants filed their opening brief in this matter. After filing their opening brief, appellants retained the Tax Appeals Assistance Program (TAAP) to represent them. Rachel Geagea, a law student with the University of San Diego School of Law and a participant in the TAAP program, filed a reply brief on behalf of appellants. On April 17, 2020, TAAP informed the Office of Tax Appeals that it no longer represented appellants in this matter.

² The oral hearing was noticed for Sacramento, California, and conducted electronically due to COVID-19.

FACTUAL FINDINGS

1. Appellants did not file a timely 2006 California income tax return.
2. FTB sent each appellant a Request for Tax Return (requests) for the 2006 tax year.
3. Appellants did not respond to the requests and FTB issued each appellant a Notice of Proposed Assessment (NPA). Appellants did not protest the NPAs.
4. After the NPAs became final, appellants made several payments totaling \$10,923.25. FTB also transferred \$808 from other tax years to the 2006 tax year, including the most recent payment in the amount of \$23.72 which was made on August 26, 2011.³
5. On January 28, 2013, appellants jointly filed an untimely original 2006 tax return. On that return, appellants reported zero tax resulting in an overpayment in the amount of \$11,534.25. Appellants requested a refund of the overpayment.
6. FTB determined that a refund of the overpayment was barred by the statute of limitations and, following various correspondences between appellants and FTB, FTB denied appellants' refund claim.
7. Appellants then filed this timely appeal.

DISCUSSION

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 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.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Avril* (78-SBE-072) 1978 WL 3545.) Further, the statute of

³. We note that this payment of \$23.72 is the most recent payment for appellants' 2006 tax year. All other payments and transfers occurred earlier in time.

limitations is “strictly construed and . . . 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* (85-SBE-077) 1985 WL 15856.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

In the instant case, the *four-year* statute of limitations to file a claim for refund for the 2006 tax year expired on April 15, 2011.⁴ Pursuant to the *one-year* statute of limitations, the time to claim a refund expired on August 26, 2012.⁵ Appellants’ untimely original return which claimed a refund of the overpayment for the 2006 tax year was filed on January 28, 2013.⁶ Thus, appellants’ claim for refund was filed after the expiration of the statute of limitations because it was filed more than four years from the original due date of the tax return for the 2006 tax year and was also filed more than one year from the respective dates of all payments and transfers made for the 2006 tax year, including the most recent payment transferred on August 26, 2011. Therefore, under R&TC section 19306(a), appellants’ claim for refund was not timely.

However, appellants argue that the statute of limitations should have been suspended, thereby making the claim for refund timely. In that regard, appellants argue that their circumstances fall under an exception to the statute of limitations because appellant-husband was financially disabled as defined under R&TC section 19316. Under this provision, the time for filing a claim for refund may be suspended during the period in which an individual taxpayer is financially disabled as defined in R&TC section 19316(b). (R&TC, § 19316(a).)

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

⁴ Appellants did not file a return prior to the extended due date for the 2006 tax year. Therefore, the four-year statute of limitations runs from the original filing due date of April 15, 2011. (See R&TC, § 19306(a).)

⁵ As previously mentioned, appellants’ most recent payment applied to the 2006 tax year was a payment of \$23.72 made on August 26, 2011.

⁶ Appellants’ untimely tax return filed for the 2006 tax year would be treated as a claim for refund of the overpayment indicated on the tax return if filed within four years from the last day prescribed for filing the return. (See R&TC, § 19307.)

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); *Appeal of Estate of Gillespie, supra.*)

Appellants argue that they were financially disabled because appellant-husband was diagnosed with several significant chronic health problems, suffered the loss of a business, and experienced other difficulties. Appellants further assert that these difficulties continuously impaired appellants from filing the 2006 tax return, and the refund claimed therein, prior to the expiration of the statute of limitations. Thus, appellants assert that the statute of limitations was suspended under R&TC section 19316 due to appellants being financially disabled.

We understand appellants' arguments and are sympathetic to the unfortunate circumstances appellants experienced. However, the financial disability exception to suspend the statute of limitations requires that, in addition to physical or mental impairment, there must have been no spouse or other person who is legally authorized to act on the individual taxpayer's behalf in financial matters during the relevant period.⁷ (R&TC, § 19316(b)(2).) In this case, there is no evidence in the record, nor evidence presented at the oral hearing in this matter, that appellant-wife was not legally authorized, nor unable, to act on behalf of both appellants with respect to filing the 2006 tax return and the refund claimed therein.⁸ Thus, appellants have not established that they were financially disabled pursuant to the provisions in R&TC section 19316, and therefore the statute of limitations was not suspended.

⁷ At the oral hearing in this matter, FTB disputed appellants' contention that appellant-husband was physically or mentally impaired. However, because we find that the requirement in R&TC section 19316(b)(2) has not been met, we need not address this contention.


⁸ At the oral hearing in this matter, appellant-husband testified that appellant-wife was authorized to act on his behalf. Nothing in the written record nor testimony at the oral hearing showed that appellant-wife was disabled during the period at issue in this appeal.

HOLDING

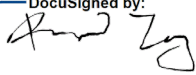
Appellants did not file their claim for refund before the expiration of the statute of limitations.

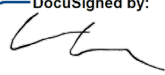
DISPOSITION

FTB’s action is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 2/17/2021