

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. DAUGHERTY

) OTA Case No. 19105339
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OPINION

Representing the Parties:

For Appellant: Ana Erickson, Tax Appeals Assistance Program

For Respondent: Ellen L. Swain, Tax Counsel IV

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Daugherty (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refunds of \$605.21 for the 2009 tax year; \$771.93 for the 2010 tax year; \$571.12 for the 2011 tax year; and \$1,052.53 and the 2012 tax year.

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

ISSUE

Whether appellant timely filed a claim for refund for the 2009, 2010, 2011, or 2012 tax year.

FACTUAL FINDINGS

1. For the 2009 tax year, FTB received information indicating that appellant may have received sufficient income to require a tax filing. When appellant failed to file a 2009 tax return, FTB initiated collection action based on its estimation of appellant’s income.
2. Appellant filed the 2009 tax return on June 1, 2015, which FTB treated as a claim for refund for the \$605.21 FTB collected during its collection actions and credited his 2009

- account for the same amount. FTB then applied the credit to the Internal Revenue Service (IRS) as an agency offset payment.
3. For the 2010 and 2011 tax years, FTB received information indicating that appellant may have received sufficient income to require a tax filing for each year. When appellant failed to file the 2010 and 2011 tax returns, FTB initiated collection action based on its estimation of appellant's income.
 4. Appellant filed the 2010 and 2011 tax returns on August 15, 2019, which FTB treated as claims for refund for the 2010 and 2011 tax years. FTB credited payments it received through collection actions on December 12, 2014, to appellant's 2010 and 2011 accounts. FTB denied the refund claims.
 5. For the 2012 tax year, FTB received information indicating that appellant may have received sufficient income to require a tax filing. When appellant failed to file a 2012 return, FTB initiated collection action based on its estimation of appellant's income.
 6. Appellant filed the 2012 tax return on August 15, 2019, which FTB treated as a claim for refund. FTB credited payments collected on December 12, 2014, and March 1, 2015, to appellant's 2012 account and denied the refund claim.
 7. This timely appeal followed.

DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer has the burden of proof to show that he or she is entitled to a refund. (*Appeal of Gillespie*, 2018-OTA-052P.)

R&TC section 19306(a) provides, in part, that no credit or refund shall 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 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. (See *Appeal of Khan*, 2020-OTA-126P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him or her from doing so at a later date. (*Ibid.*)

Here, appellant filed his 2009 tax return on June 1, 2015, which FTB treated as a claim for refund. Because appellant did not timely file a 2009 return, appellant was required to file a refund claim no later than April 15, 2014, under the four-year statute of limitations, which is four years from the original due date of that return. Under the alternative one-year statute of limitations, appellant was required to file the refund claim no later than December 12, 2015, which is one year from the date appellant made his final payment owed for the 2009 tax year. Although FTB concedes that there was an overpayment and that appellant timely filed his claim for refund before December 12, 2015, FTB remitted the credit to the IRS as an agency offset payment, pursuant to R&TC section 19301. Thus, there is no longer a balance to refund to appellant.

Appellant filed the 2010 tax return on August 15, 2019, which FTB treated as a claim for refund. Because appellant did not timely file the 2010 return, appellant was required to file a refund claim no later than April 15, 2015. Under the alternative one-year statute of limitations, appellant was required to file a refund claim no later than December 12, 2015, which is one year from the date appellant made his final payment satisfying taxes he owed for the 2010 tax year.

Appellant filed the 2011 tax return on August 15, 2019, which FTB treated as a claim for refund. Because appellant did not timely file a 2011 tax return, appellant was required to file a refund claim no later than April 15, 2016. Under the alternative one-year statute of limitations, appellant was required to file a refund claim no later than December 12, 2015, which is one year from the date appellant made his final payment satisfying taxes he owed for the 2011 tax year.¹

Appellant filed the 2012 tax return on August 15, 2019, which FTB treated as a claim for refund. Because appellant did not timely file a 2012 tax return, appellant was required to file a refund claim no later than April 15, 2017. Under the alternative one-year statute of limitations, appellant was required to file a refund claim no later than March 1, 2016, which is one year from the date appellant made his final payment satisfying taxes he owed for the 2012 tax year.²

Accordingly, since appellant did not timely file a refund claim under either the four-year or one-year statute of limitations for 2010, 2011, or 2012, he is barred from receiving a refund for those tax years.

¹ We note that the alternative one-year statute of limitations for 2011 expired before the four-year statute of limitations in R&TC section 19306(a).

² We note that the alternative one-year statute of limitations for 2012 expired before the four-year statute of limitations in R&TC section 19306(a).

Appellant asserts that the statute of limitations should have been suspended due to disability. Pursuant to R&TC section 19316, the time for filing a claim for refund may be suspended if 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. The definition of a financially disabled individual is substantially similar to the federal definition under Internal Revenue Code section 6511(h)(2).

To demonstrate financial disability, a taxpayer must submit a physician’s affidavit that explains the nature and duration of the taxpayer’s physical or mental impairments. (*Appeal of the Estate of Gillespie, supra.*) In addition, the taxpayer must show that he or she satisfies the strict definition of financial disability such that the taxpayer could not manage his or her financial affairs; it is insufficient to show that the taxpayer could not engage in a regular occupation. (*Appeal of Meek* (2006-SBE-01) 2006 WL 864344.) The period of financial disability must occur during the limitations period. (*Ibid.*)

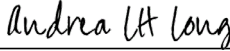
Appellant has provided various medical records ranging from January 2013 through August 2013. However, the records do not indicate that appellant was financially disabled due to a physical or mental impairment that lasted at least twelve months. Moreover, appellant has not provided a physician’s affidavit stating that appellant was unable to manage his financial affairs within the running of any period as specified in R&TC section 19306. Accordingly, we find that appellant did not file a refund claim for 2010, 2011, or 2012 within the applicable statute of limitations, nor that financial disability tolled the statute of limitations.

HOLDING


Appellant timely filed a claim for refund for the 2009 tax year; however, no refund to appellant is due because FTB remitted the refund amount to the IRS as an agency offset. Appellant did not timely file a claim for refund for the 2010, 2011, or 2012 tax year.

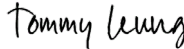
DISPOSITION

FTB’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 3/16/2021