

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20015718
M. MILLER (DEC'D))
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OPINION

Representing the Parties:

For Appellant: Shane White, CPA

For Respondent: Pamela W. Bertani, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Miller¹ (dec'd) (appellant) appeals an action by respondent Franchise Tax Board denying appellant's claim for refund of \$20,370.07, plus applicable interest for the 2003 tax year.

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

ISSUE

Whether appellant's claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Respondent received notice that appellant paid mortgage interest of \$27,845 and \$9,132 on a California property during 2003 but had not filed a California income tax return for 2003.
2. Respondent subsequently sent appellant a Demand for Tax Return on January 18, 2005.
3. As appellant failed to file a 2003 return or provide sufficient evidence to establish that

¹ We note that the claim for refund was filed on behalf of the Estate of M. Miller, however, the denial of the claim for refund was addressed to M. Miller and not her estate, therefore, we refer to M. Miller as appellant in this appeal.

- she did not have a filing requirement, respondent estimated appellant's income and issued a Notice of Proposed Assessment (NPA) on March 21, 2005. Appellant failed to respond to or protest the NPA and it became final.
4. Respondent pursued involuntary collection of the balance then due. On December 23, 2005, respondent obtained a payment of \$2,394.15. Respondent obtained another payment of \$499.68 on May 30, 2013.
 5. Appellant passed away in February of 2015 and R. Frank was appointed as the executor of appellant's estate.
 6. In March 2017, the estate sold real property during R. Frank's tenure as executor. On March 1, 2017, respondent received a \$17,050.24 lien payment from appellant's estate, which satisfied appellant's 2003 liability.
 7. R. Frank was diagnosed with cancer in November 2017 and passed away in February of 2018. R. Frank was also caring for her ailing husband who passed away in October 2017.
 8. T. Laney was appointed as executor of appellant's estate on April 26, 2018.
 9. On September 9, 2019, respondent received appellant's 2003 state income tax return, signed by T. Laney as executor of appellant's estate reporting \$0 total tax, and claiming an overpayment of \$17,503. Respondent accepted the return as filed but made fee adjustments which resulted in an overpayment of \$20,370.07.²
 10. Appellant's estate filed a claim for refund on August 30, 2019, which respondent denied as time-barred.
 11. This appeal followed.

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

² This amount consists of the three payments of \$499.68, \$2,934.15, and \$17,050.24, as noted above, less a collection cost recovery fee of \$101 and a lien fee of \$13.

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, *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P). Further, neither ill health of a taxpayer, nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie, supra*). The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra*.) 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.)

Appellant does not dispute that her claim for refund was not timely filed within either the four-year or one-year statute of limitations period.³ Instead, appellant argues that the doctrine of equitable tolling applies to appellant's claim for refund and that the statute of limitations should be equitably tolled in this matter because it was impossible for appellant's executor to file the claim for refund within the limitations period due to the executor's terminal illness and the fact that she was caring for her ill husband at the time. Appellant references two cases in her opening brief. The first is *Hill v. Franchise Tax Board* (1994) 37 Cal.Rptr.2d 321⁴ in which the California court of appeal determined that the doctrine of equitable tolling was available in tax refund suits. We note that this unpublished opinion is not citable, has no precedential value and is not binding on OTA and therefore, we will not discuss it further. Appellant also cites *Lewis v. Superior Court* (1985) 175 Cal.App.3d 366⁵ (*Lewis*) in which the court found an implicit tolling exception to the statute of limitations for filing civil suits, where an unforeseeable accident rendered it impossible to comply with the statute of limitations. *Lewis* is not applicable here in that it involves the statute of limitations for filing a civil suit and not for filing a claim for refund

³ As, appellant's 2003 return was due on April 15, 2004, the four-year statute of limitations for filing a claim for refund expired on April 15, 2008. Appellant's last payment for the 2003 tax year was made on March 1, 2017, thus the one-year statute of limitations for filing a claim for refund expired on March 1, 2018. Appellant's 2003 return was filed on September 9, 2019, well beyond the expiration of both the four-year and one-year limitations periods.

⁴ Appellant only provided the case name and did not provide the citation. We presume this is the case to which appellant is referring.

⁵ Again, appellant only provided the case name and did not provide the citation. We presume that this case to which appellant is referring.

of taxes. Further, as noted above we are bound to follow the well-settled precedent which precludes equitable tolling for tax refund claims.

Financial Disability

While California law does not permit equitable tolling of the statute of limitations for filing a refund claim, pursuant to R&TC section 19316, the time for filing a claim for refund may be extended during the period in which the taxpayer is financially disabled, as defined by R&TC section 19316(b). 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 legally authorized person to act on the taxpayer's behalf in financial matters. (R&TC, §19316(b)(1) & (2).)

As noted above, on March 1, 2017, respondent received a \$17,050.24 lien payment from appellant's estate.⁶ Appellant argues that at the time the funds were levied, R. Frank, the then executor of appellant's estate, was financially disabled and thus, the funds at issue should not have been levied.⁷ To support her contentions, appellant provides a letter from Dr. Nguyen, MD regarding R. Frank. It is undisputed that R. Frank was diagnosed with cancer in November 2017, and it is likely that the cancer was growing two years prior to her initial presentation. Appellant also provided a copy of R. Frank's death certificates indicating that R. Frank subsequently died of cancer in February 2018.

However, appellant has failed to establish that R. Frank was financially disabled to justify a tolling of the applicable statute of limitations. When a taxpayer alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was unable to

⁶ We note appellant has not provided any arguments or evidence with respect to the payments made on December 23, 2005, and May 30, 2013.

⁷ R&TC section 19136 is applicable to an "individual taxpayer" who is financially disabled. As such, there is an open question as to whether R&TC 19136 applies to "financially disabled executor" as appellant asserts here. However, as appellant has failed to establish that the executor was financial disabled pursuant to R&TC section 19136, we need not reach this issue.

manage their financial affairs. (*Appeal of Estate of Gillespie, supra*). To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

Dr. Nguyen’s letter does not contain information required to establish financial disability under R&TC section 19136, as it fails to state Dr. Nguyen’s opinion that R. Frank was unable to manage her affairs during her illness or the specific periods during which R. Frank was unable to manage her financial affairs. Further, there is evidence in the record that R. Frank was managing the estate’s affairs in March 2017, when R. Frank sold real property belonging to the estate. Presumably, if R. Frank was able to engage in real estate transactions, she was not financially disabled and unable to manage her tax affairs within the meaning of the statute. Thus, we find that appellant has not established a basis for tolling the statute of limitations.

HOLDINGS

Appellant’s claim for refund is barred by the statute of limitations.

DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 3/2/2021