

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**M. CEROLI**

) OTA Case No. 18113968  
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**OPINION**

Representing the Parties:

For Appellant: Ileana Polis, Representative  
Tax Appeals Assistance Program (TAAP)  
M. Ceroli

For Respondent: Leoangelo C. Cristobal, Tax Counsel  
Maria Brosterhous, Tax Counsel IV

For Office of Tax Appeals: Neha Garner, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Ceroli (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,600<sup>1</sup> for the 2010 taxable year.

Office of Tax Appeals Administrative Law Judges Teresa A. Stanley, Daniel K. Cho, and Nguyen Dang held an oral hearing for this matter in Cerritos, California, on March 17, 2020. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

**ISSUE**

Has appellant established that his financial disability tolled the statute of limitations to file a claim for refund for taxable year 2010?

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<sup>1</sup> Appellant requested a refund of all payments made, but apparently rounded the \$6,636.47 paid to \$6,600, and FTB’s response rejected the claim for \$6,600. Appellant did not dispute the collection costs recovery fee or the county lien fee. FTB refunded \$1,981.62 and conceded on appeal that it will refund an additional \$2,145.33, plus applicable interest. The remainder of appellant’s claim for refund (\$4,491.14) remains at issue in this appeal.

FACTUAL FINDINGS

1. Appellant failed to timely file a 2010 California tax return. Appellant did not respond to FTB's demand to file a tax return. Subsequently, FTB estimated appellant's income, issued a Notice of Proposed Assessment that became a final liability, and initiated filing enforcement action.
2. FTB subsequently took collection action, and between May 15, 2013, and April 15, 2015, collected payments totaling \$4,666.89. In addition, FTB received a \$2,145.33 payment on June 10, 2016, and a \$1,981.62 payment on August 24, 2016.
3. On March 15, 2017, appellant filed a 2010 California tax return, which reported no tax due and no payments made.
4. For 2010 appellant reported capital gains, income from Film Musicians, and a deduction for mortgage interest paid. Appellant also sold various securities and his home in 2010.
5. After processing appellant's return, on September 19, 2017, FTB informed appellant that the Internal Revenue Service (IRS) had intercepted his \$1,981.62 state tax refund (the amount of the final collection payment received).<sup>2</sup>
6. On August 27, 2018, FTB received appellant's claim for refund (FTB Form 2917, Reasonable Cause - Individual and Fiduciary Claim for Refund). Appellant explained that he was unemployed and had applied for disability because of a brain injury he suffered in 1997, and that he has suffered from seizures and memory loss since that time. Additionally, appellant claimed that he had relied on a tax preparer to file his returns.
7. Other than the \$1,981.62<sup>3</sup> (collected by FTB on August 24, 2016), FTB denied appellant's claim for refund, stating that appellant failed to show reasonable cause to abate the late-filing penalty and fees.<sup>4</sup> This timely appeal followed.

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<sup>2</sup> We have no record reflecting FTB's decision to issue this partial refund.

<sup>3</sup> FTB mistakenly had not processed appellant's return (received March 15, 2017) and determined that appellant was only entitled to a refund of \$1,981.62 (the amount paid within a year of the second copy that appellant sent to FTB on August 17, 2017). On appeal, FTB now accepts appellant's March 15, 2017 return as his claim for refund and concedes that appellant is entitled to an additional refund of the \$2,145.33 payment made on June 10, 2016.

<sup>4</sup> It is unclear why FTB did not address the substance of appellant's claim for the full amount paid based on not owing tax for 2010. Only on appeal did FTB take the position that appellant's claim for refund was partially barred by the statute of limitations. Both parties argue whether the statute of limitations was tolled based on appellant's financial disability, and that is what we address herein

## DISCUSSION

Between May 15, 2013, and April 15, 2015, FTB collected payments totaling \$4,666.89.<sup>5</sup> FTB refunded the \$1,981.62 it collected on August 24, 2016. FTB concedes on appeal that appellant is entitled to a credit or refund of the \$2,145.33 collected on June 10, 2016. The remainder of appellant's payments preceded March 15, 2016, and cannot be refunded because these payments are time-barred by the statute of limitations unless appellant shows that an exception applies.<sup>6</sup>

As relevant here, R&TC section 19316 contains an exception to the statute of limitations, suspending the limitations period specified in R&TC section 19306 during any period in which a taxpayer is "financially disabled." A financially disabled taxpayer is an individual who "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." (R&TC, § 19316(b)(1).) A taxpayer shall not be considered financially disabled for any period when his spouse or any other person is legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(2).)

To demonstrate the existence of a financial disability, the taxpayer must submit a signed affidavit from a physician which explains the nature and duration of the taxpayer's physical or mental impairments. (*Appeal of Gillespie*, 2018-OTA-052P; *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) In addition, the taxpayer must show that the period of financial disability overlaps with the relevant limitations period. (*Appeal of Meek*, *supra*.) Disability for Social Security purposes means a person is unable to engage in gainful employment, which is distinguishable from an inability to manage financial affairs. (*Ibid*.)

Appellant contends that he was unable to file a timely claim for refund due to a physical disability caused by a head injury in 1997. In support, appellant submitted documentation from an unnamed neurologist stating that appellant has had seizures since 2009 and is currently on medication to control the seizures. Appellant did not obtain an affidavit from that neurologist or

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<sup>5</sup> As noted above, the collection costs recovery fee and county lien fee are included in the amount collected but are not in dispute.

<sup>6</sup> Appellant renewed his claim for refund on a form used by FTB for claims to abate penalties based on reasonable cause. Reasonable cause does not toll the statute of limitations. (See R&TC, § 19306 [no mention of reasonable cause].) We, therefore, do not discuss appellant's evidence and testimony supporting his reliance on a tax preparer to timely file his returns.

any other physician. Appellant argues that, because of this physical disability, he was unable to manage his financial affairs since 1997. However, for 2010 appellant reported that he sold various securities throughout 2010, that he sold his house, that he had a small amount of income from Film Musicians, and paid \$35,826 in mortgage interest, all of which demonstrate an ability to manage financial affairs. A taxpayer's ability to manage financial affairs during a period of claimed illness demonstrates that the taxpayer is not financially disabled. (See *Haller v. Commissioner*, T.C. Memo. 2010-147.) Furthermore, the physician's note indicating that appellant has been taking medication to control his seizures does not alone show how his seizures prevented him from managing his financial affairs for a continuous period of not less than 12 months.

The submission of a physician's statement, without confirmation of the assertions therein, does not establish a financial disability. At a minimum, a taxpayer must submit a physician's affidavit, which constitutes a prerequisite that must be satisfied before the merits of the proof can be addressed so that a determination can be made as to whether the taxpayer suffered from a financial disability. (*Appeal of Gillespie, supra; Estate of Rubinstein v. United States* (2011) 96 Fed.Cl. 640.) In this case, the physician statement does not meet appellant's burden of proof because the physician states that he has never seen appellant. The physician refers only to appellant's medical records, which she relied upon and which are incomplete. Appellant argues that the burden for appellant to have a physician sign an affidavit for an incident that took place in 1997 is unreasonable. Appellant argues that he is unable to locate physicians after more than ten years and that the physicians whose care he has recently been under refused to sign an affidavit as he was not under their care at the time of the incident. Without evidence showing the duration for which appellant was unable to handle his financial affairs during his illness, it is not possible to define the period when the statute of limitations for filing a claim for refund must be suspended under R&TC section 19316. Furthermore, appellant's evidence and testimony that he applied for federal social security disability benefits has no bearing on whether he was financially disabled during the relevant time period.

Finally, appellant testified that tax notices were sent directly to a tax preparer and that any tax notices he received were forwarded to the same tax preparer. However, appellant also testified that the notices sent by FTB were addressed to his address and not to the tax preparer, albeit at an address appellant contends was his "former" residential address. Appellant and his

live-in partner were able to reach out to experts when necessary to manage financial matters, such as the tax preparer and real estate professionals who sold appellant's home in 2010. Appellant's contention that the tax preparer failed to take the proper actions does nothing to show that he himself was financially disabled, even if he authorized the tax preparer to act on his behalf.<sup>7</sup> Additionally, appellant filed five tax returns during the period he contends he was unable to file his return or a claim for refund.


While we do not doubt appellant suffers from medical difficulties, we must follow California law. Appellant's evidence does not show that he suffered a financial disability that would entitle him to a suspension of the statute of limitations.

### HOLDING


As conceded by FTB, appellant is entitled to an additional refund in the amount of \$2,145.33, plus interest. The remainder of appellant's claim for refund is barred by the statute of limitations.

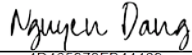
### DISPOSITION

FTB's denial of appellant's claim for refund is modified, as conceded on appeal, and is otherwise sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Daniel K. Cho  
Administrative Law Judge

DocuSigned by:  
  
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Nguyen Dang  
Administrative Law Judge

Date Issued: 6/24/2020

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<sup>7</sup> A power of attorney was signed on August 11, 2016.