

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. JANES

) OTA Case No. 21067908
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OPINION

Representing the Parties:

For Appellant: L. Janes

For Respondent: Joel M. Smith, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Janes (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$101,031 for the 2015 tax year.

The matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2015 tax year.
2. On May 11, 2017, respondent issued a Demand for Tax Return (Demand), which instructed appellant to reply by June 14, 2017, by filing a 2015 income tax return, providing a copy of appellant’s 2015 income tax return, if it had been filed already, or providing information to show that appellant was not required to file a 2015 income tax return.¹ Appellant did not reply to the Demand.

¹ All references in this Opinion to documents (Demands, Notices, etc.) issued by respondent are references to documents issued to appellant.

3. On July 10, 2017, respondent issued a Notice of Proposed Assessment (NPA) of \$59,337 in tax, plus a late-filing penalty of \$14,834.25, a demand penalty of \$14,834.25, a filing enforcement cost recovery fee of \$84, and interest. The NPA informed appellant: that she must file a tax return, even if appellant paid the proposed liability; that she could protest the NPA within 60 days;² and that respondent, which based the proposed liability on an estimate of appellant's 2015 income, would adjust the tax, penalties, interest, and fees as appropriate when appellant filed a 2015 return. Appellant did not file a protest or a 2015 income tax return within 60 days, and the NPA became a final and collectable liability.
4. Respondent began collection activities, including issuance of a Notice of State Income Tax Due on October 9, 2017, an Income Tax Due Notice on November 21, 2017, a Final Notice Before Levy and Lien on December 28, 2017, and an Intent to Record a Notice of State Tax Lien on February 26, 2018. Respondent received the first payment toward the liability on December 10, 2018. Respondent issued a Collection Status Notice on February 14, 2019, and received the second payment against the liability on February 15, 2019. An additional payment was received on April 11, 2019, and the final payments, the ones which paid the liability in full, were received by respondent on July 23, 2019.
5. Appellant filed a 2015 California income tax return on November 25, 2020, claiming an overpayment. Respondent accepted the return, treated it as a claim for refund, and by letter dated March 1, 2021, denied the claim on the grounds that it was barred by the statute of limitations. This timely appeal followed.

DISCUSSION

Statutes of limitations prescribe the period of time allowed to assert a legal right. As relevant here, a claim for credit or refund must be filed within four years from the date the return was filed, if filed within an extension allowed by R&TC sections 18567 or 18604, within four years from the last day prescribed for filing the return without regard to any such extension, or within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) A claim that contains all necessary elements under R&TC section 19322 and that is

² Respondent included instructions on how to file a protest.

filed within the applicable limitations period (described above) but before the liability is paid in full is an “informal” claim for refund, which tolls or suspends the time allowed for filing the claim for refund for all subsequent payments as long as the liability is paid in full within seven years of the initial payment.³ (R&TC, § 19322.1.)

Statutes of limitations are strictly construed, and absent legislative authority, we cannot relieve a taxpayer of what may at times be the harsh results of such fixed deadlines. (*Estate of Gillespie*, 2018-OTA-052P.) Considering the scope of the tax administration systems and the vast numbers of claims for refund, the law considers such harsh results an acceptable consequence of having an important obligation clearly defined and strictly enforced. (*Ibid.*; *Appeal of Khan*, 2020-OTA-126P.) Nevertheless, the Legislature has authorized relief under the narrow circumstances described below.

Generally, ill health of the taxpayer or other unfortunate circumstances do not toll or extend the period within which a claim may be filed and deemed timely. However, the statute of limitations applicable to certain claims for refund is suspended for the period during which the taxpayer is “financially disabled.” (R&TC, § 19316.) R&TC section 19316 identifies two requirements to prove an individual taxpayer is financially disabled: the taxpayer must be incapable of managing his or her financial affairs due to a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of at least 12 months; and taxpayer must not have a spouse or any other person legally authorized to act on the taxpayer’s behalf in financial matters.⁴ (R&TC, § 19316(b)(1), (2).)

The Legislature granted respondent the authority to specify the procedures and requirements for establishing the financial disability of an individual taxpayer. (R&TC, § 19316(a).) Respondent did so when it published Form 1564 with instructions, which provide that the taxpayer must prove the financial disability.⁵ In this latter regard, the instructions to

³ In other words, a taxpayer making periodic payments need not file a timely claim for refund after each payment under the circumstances described in the statute. The informal claim suspends the limitations period, and the formal claim is deemed filed when the liability for the tax year is paid in full, but the formal claim relates back no more than seven years. (R&TC, § 19322.1.)

⁴ Section 19316 does not define “terminal.”

⁵ California Code of Regulations, title 18, section 30219, states that except as otherwise provided by law, appellant has the burden of proof (by a preponderance of the evidence) as to all issues of fact. A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Form 1564 state that if the IRS determines a taxpayer is financially disabled, respondent will follow that determination; but if there is no such determination by the IRS, Form 1564 may be used to obtain a Physician Affidavit of Physical or Mental Impairment (Affidavit) from the taxpayer's physician. However, such Affidavit is not necessarily determinative. If there is reason to suspect fraud or forgery, or if the veracity or accuracy of the Affidavit is called into question, additional proof, such as medical records, may be required. (*Appeal of Meek* (2006-SBE-01) 2006 WL 864344.)

Appellant appears to argue that the return and claim for 2015 was late because she was financially disabled. Appellant states that she was mentally, more than physically, impaired for “up to four years” and just could not concentrate when her daughter suffered from serious emotional and mental issues that required multiple in-patient stays from sometime in 2016 until the Fall of 2019.⁶ Appellant adds that she, too, had her own challenges, with two major surgeries, anxiety, and depression, though appellant acknowledges that she was able to “get by” at her retail business, ordering merchandise, paying bills, employees, and sales taxes and timely filing all required federal and state forms. Appellant states that it was the personal business and finances that suffered, though she was able to make sure that she maintained an adequate checking account balance to pay personal bills.

Appellant's 2015 return and claim for refund was filed after the period of time allowed by the statute of limitations. The last-expiring limitations period for the payments made on December 10, 2018, February 15, 2019, and April 11, 2019, was the four-year limitations period that would have expired on April 15, 2020, four years after the last day prescribed for filing the return without regard to a statutory extension; however, respondent postponed the April 15, 2020 claim due to July 15, 2020, due to the COVID-19 pandemic.⁷ Appellant did not file the 2015 return, which also was the claim for refund, until November 25, 2020, four months and 10 days after the four-year limitations period expired.⁸ The last-expiring limitations period for the payments made on July 23, 2019, was the one-year period that expired on July 23, 2020, four

⁶ Appellant does not provide specific dates.

⁷ R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time sensitive acts.

⁸ Because appellant did not file the 2015 return within an extension allowed by R&TC sections 18567 or 18604, only the alternate four-year limitations period (four years from the last day prescribed for filing the return without regard to any such extension) could apply.

months and two days before appellant filed the claim for refund.⁹ Thus, it is clear that appellant filed the claim for refund after the limitations periods expired and that the claim was barred in its entirety unless the limitations period was suspended by appellant's financial disability.

Appellant has the burden of proving that she was financially disabled within the meaning of R&TC section 19316. While appellant has described the painful circumstances that, in appellant's mind, at least, warrant a finding that appellant was financially disabled, her statements fall far short of what the law requires. Appellant does not allege or prove that the IRS found her to be financially disabled, and, while respondent provided Form 1564 (with instructions) to appellant, appellant did not provide a completed Affidavit from appellant's physician. Respondent's denial of the claim can be sustained on this evidentiary basis alone; but we also note that even the circumstances described by appellant do not establish a financial disability that would have prevented appellant from filing a timely return and claim for refund.

Appellant states that she was more mentally impaired than physically impaired during at least part of 2016 through 2019, and even during this period, appellant was able to work and manage her retail business and at least some of her personal finances. Thus, what appellant describes is not a financial disability because she was able to manage financial affairs. Appellant chose the matters on which to focus her attention. But even if we assume appellant was financially disabled until the last day of 2019, an informal claim for refund would have been timely for all payments if appellant had filed a return and informal claim by July 15, 2020; and it would have been timely for over 91 percent of the overpayment if appellant had filed a return and informal claim by July 23, 2020.

We find that the evidence does not establish that appellant was financially disabled. Consequently, we conclude that appellant's claim for refund is barred by the statute of limitations.

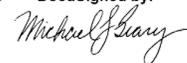
⁹ Respondent received two payments toward the liability on July 23, 2019. Those two payments totaled more than 91 percent of the total overpayment.

HOLDING

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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Michael F. Geary
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Administrative Law Judge

Date Issued: 1/12/2022