

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21119127
A. ALVARRAN AND)
G. ALVARRAN)
_____)

OPINION

Representing the Parties:

For Appellants: A. Alvarran and G. Alvarran

For Respondent: Sarah J. Fassett, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Alvarran and G. Alvarran (appellants) appeal an action by respondent Franchise Tax Board (FTB) partially denying appellants’ claim for refund in the amount of \$1,583.16 for the 2016 tax year.

Appellants waived the right to an oral hearing. Therefore, this appeal is decided based on the written record.

ISSUE

Whether appellants’ remaining claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. FTB received information that A. Alvarran (appellant-wife) may have earned income in 2016 that required her to file a California income tax return.
2. FTB issued a Request for Tax Return to appellant-wife on May 3, 2018, and, when she did not respond, FTB issued a Notice of Proposed Assessment (NPA) to her on July 2, 2018.
3. The NPA estimated appellant-wife’s income and proposed a tax assessment of \$1,942, a late filing penalty of \$485.50, and interest.
4. Appellant-wife did not respond to the NPA, and it became final.

5. Subsequently, appellant-wife paid the amount due totaling \$2,859.77. Specifically, payments totaling \$2,859.77 were made between March 20, 2019, and April 20, 2021, and payments totaling \$1,263.77¹ were made after September 15, 2020.
6. On September 15, 2021, appellants filed a 2016 California income tax return, and reported total tax of \$238 and requested a refund of overpaid tax. FTB accepted the return and treated it as a claim for refund.
7. FTB determined that appellants had a total overpayment of \$2,846.93, but only refunded \$1,263.77 due to the statute of limitations barring a refund of the remaining amount of \$1,583.16.
8. This timely appeal followed.

DISCUSSION

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 original 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).) A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

The law does not provide for the waiver of the statutory period based on reasonable cause. A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) This is true even when it is later shown that the tax was not owed in the first instance. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

For those refund claims due by April 15, 2021, under the four-year statute of limitations, the claim is considered timely if the individual taxpayer filed the claim on or before the extension date of May 17, 2021.² For purposes of claiming a refund within one year of an

¹ This amount includes 16 separate payments of \$50 between September 30, 2020, and April 15, 2021, a transfer of \$452 from the 2020 tax year applied on March 2, 2021, and a final payment of \$11.77 on April 15, 2021.

² <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>

overpayment, the look-back period applies to payments made within one year of the actual expiration of the statute of limitations, but if that date expired on April 15, 2021, the claim for refund is considered timely if the individual taxpayer filed the claim on or before May 17, 2021.³

The four-year statute of limitations for the 2016 tax year expired on April 15, 2021 (four years from the original due date of appellants' 2016 return), which as stated above, FTB extended to May 17, 2021. The look-back period as applicable to the one-year statute of limitations applies to payments made within one year of the date the claim for refund is filed. Therefore, under the one-year statute of limitations payments made within one year of appellant's claim for refund filed on September 15, 2021, is only timely with respect to payments made within one year of this date. Thus, the claim for refund is timely with respect to payments made on or after September 15, 2020, but is untimely as to any payments made before this date.

Appellants argue that the last payment for 2016 was on April 15, 2021, which they state is six months from their last activity taken for 2016. However, appellants' claim for refund, their tax return, was filed on September 15, 2021, which is beyond the May 17, 2021 date for filing a timely claim for refund under the four-year statute of limitations. With regard to the one-year statute of limitations, FTB allowed a refund of the payments made within one-year of September 15, 2021, which totaled \$1,263.77. From September 15, 2020, through September 15, 2021, appellants made 16 payments of \$50 totaling \$800, one payment of \$11.77, and transferred \$452 from their 2020 tax year. These payments total \$1,263.77, which FTB refunded to appellants. However, the remainder of appellants' payments were made before September 15, 2020, and are barred by the one-year statute of limitations.

Appellants also assert that their family experienced financial hardships and medical issues. Pursuant to R&TC section 19316, the time period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is "financially disabled," as defined by that provision. The running of the period for filing a claim for refund is suspended if: (1) "an 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 who can act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(1)-(2).)

³ <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>

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 manage his or her 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.*) In this case, appellants do not provide evidence to show that the statute of limitations should be tolled due to financial disability. FTB requested that appellants provide a physician’s affidavit and medical records, and provided FTB Form 1564, Financially Disabled - Suspension of the Statute of Limitations, for appellants and their physician to complete. However, appellants did not provide any of the requested information. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Bracamonte, 2021-OTA-156P.*) Therefore, appellants have not shown that the statute of limitations should be tolled due to financial disability.

HOLDING

Appellants’ remaining claim for refund is barred by the statute of limitations.

DISPOSITION

FTB properly denied appellants’ refund claim in part.

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Josh Lambert

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Josh Lambert
Administrative Law Judge

We concur:

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Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

Josh Aldrich

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Josh Aldrich
Administrative Law Judge

Date Issued: 6/14/2022