

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. MENAFRA

) OTA Case No. 21068035
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OPINION

Representing the Parties:

For Appellant:

Joshua Imeri-Garcia, Tax Appeals
Assistance Program (TAAP)¹

For Respondent:

Joel M. Smith, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Menafra (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,142.51 for the 2003 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this appeal on the written record.

ISSUE

Whether appellant’s claim for refund for the 2003 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On June 16, 2001, the Social Security Administration determined that appellant was disabled.
2. On January 24, 2005, FTB issued to appellant a Demand for Tax Return (Demand) because it learned that appellant held an active license with the Board of Cosmetology in

¹ Joshua Imeri-Garcia of TAAP filed appellant’s Supplemental Brief dated February 22, 2022; James J. Youn of TAAP filed appellant’s Reply Brief dated October 10, 2021; and appellant filed her Request for Appeal signed May 24, 2021.

- 2003 and did not file a 2003 California tax return. Appellant did not respond to the Demand. Appellant states that she does not remember receiving the Demand.
3. On March 28, 2005, FTB issued to appellant a Notice of Proposed Assessment (NPA), proposing to assess tax, penalties, fees, and interest for the 2003 tax year on the basis that appellant held an active license with the Board of Cosmetology in 2003. FTB estimated income of \$22,655 based on the average income reported by those in the cosmetology industry. Appellant did not protest the NPA and the proposed liability became final.
 4. Between November 1, 2013, and June 18, 2019, appellant paid \$1,142.51 towards the 2003 liability on an installment plan.
 5. On January 7, 2021, appellant filed a refund claim for \$1,142.51 on the basis that she was disabled in 2001 and did not work in 2003.
 6. On May 4, 2021, FTB denied appellant's refund claim on the basis that it is barred by the statute of limitations.
 7. This timely 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 relevant 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no equitable basis under California law for suspending the statute of limitations. (*Ibid.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Appellant's refund claim is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. The first statute of limitations period is not applicable because appellant did not file a 2003 California return pursuant to a valid extension of time to file. The second statute of limitations period expired on April 15, 2008, because appellant's 2003 return was originally due on April 15, 2004. (R&TC, § 18566.) Lastly, the third statute of limitations period expired on June 18, 2020, because appellant made

her final payment toward her 2003 liability on June 18, 2019. Accordingly, appellant's refund claim filed on January 7, 2021, is barred by the statute of limitations.

In her request for appeal, appellant asserts that she is entitled to a refund because she was disabled in 2001 and did not work in 2003. While the time for filing a claim for refund may be extended if a taxpayer is "financially disabled," as defined in R&TC section 19316, appellant has not established that she was financially disabled at any time. A taxpayer is considered financially disabled if: (1) the "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).) A taxpayer has the burden of establishing a financial disability by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) & (c).) To demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit from a physician that explains the nature and duration of the taxpayer's physical or mental impairments. (*Appeal of Estate of Gillespie, supra.*) Here, appellant has not provided any evidence that she was financially disabled at any time. Therefore, appellant has not met her burden of establishing she was financially disabled.

Additionally, appellant relies on FTB's Technical Advice Memorandum (TAM) 2007-01, dated April 23, 2007, to assert that her payments were overcollections, not overpayments, and therefore not subject to the statute of limitations. More specifically, appellant asserts that her payments were overcollections because they exceeded "the amount actually due under the law," as FTB knew or should have known when FTB issued the NPA and accepted appellant's payments that appellant was disabled during the 2003 tax year. Appellant asserts that FTB knew or should have known of the disability because "the IRS produces 1099-SSA's for all Social Security benefit recipients," which were "readily accessible to FTB," and because appellant told FTB she was disabled before making her first installment payment.

OTA finds that appellant's payments are overpayments, not overcollections, and are subject to the statute of limitations. "TAM 2007-01 distinguishes between two types of payments resulting from FTB's involuntary collection actions (e.g., liens, levies, or withholding orders): 'overpayments,' which are subject to the provisions of R&TC section 19306(a), and 'overcollections,' which may be returned to the taxpayer after the statute of limitations for

claiming a refund has expired.” (*Appeal of Cornbleth*, 2019-OTA-408P.) “According to TAM 2007-01, ‘there is a narrow exception where the statute of limitations provisions do not apply to the return of payments that exceed what FTB is legally allowed to collect and were the result of ‘overcollection.’ An ‘overcollection’ occurs when the amount collected exceeds the amount actually due under the law as the result of clerical or mechanical error.’” (*Ibid.*) “The distinction provided for in TAM 2007-01 is an exceedingly narrow one, which applies only to involuntary collection actions taken by FTB.” (*Ibid.*) Here, appellant’s payments were overpayments, not overcollections, because appellant made those payments voluntarily under an installment plan. Accordingly, appellant’s claim for refund is subject to and barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2003 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund for the 2003 tax year is sustained.

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan

Administrative Law Judge

We concur:

DocuSigned by:

Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

DocuSigned by:

Teresa A. Stanley

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Teresa A. Stanley

Administrative Law Judge

Date Issued: 6/27/2022