

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. SANTOS

) OTA Case No. 21108765
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OPINION

Representing the Parties:

For Appellant:

J. Santos

For Respondent:

Brian Werking, Tax Counsel III

For Office of Tax Appeals:

Amber Poon, Graduate Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Santos (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$1,002.80 and \$1,019.38 for the 2015 and 2016 taxable years, respectively.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Are appellant’s claims for refund for the 2015 and 2016 taxable years barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not timely file tax returns for the 2015 and 2016 taxable years.
2. FTB issued Demands for Tax Returns to which appellant did not respond.
3. FTB estimated appellant’s income and issued Notices of Proposed Assessment for both years.

4. Appellant paid his income tax liability in full for 2015 on June 29, 2018, and for 2016 on March 13, 2019.
5. On August 15, 2021, FTB received appellant's 2015 and 2016 tax returns. Appellant claimed overpayments of \$380 and \$258 for taxable years 2015 and 2016, respectively.
6. FTB processed appellant's tax returns which it treated as claims for refund. FTB calculated overpayments of \$1,002.80 and \$1,019.38 for 2015 and 2016, respectively.
7. For both taxable years, FTB denied the claims for refund because appellant failed to file the claims before the statute of limitations expired. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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. The taxpayer has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Such fixed deadlines may appear harsh, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) OTA has no authority to grant relief except where the law specifically allows. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) On March 30, 2020, FTB published guidance postponing deadlines falling between March 12, 2020, through July 15, 2020, until July 15, 2020 (postponement period).¹ Additionally, FTB postponed filing and payment requirements for taxable year 2020 from April 15, 2021, to May 17, 2021 (second postponement period).²

Here, appellant failed to timely file his 2015 and 2016 tax returns. Therefore, pursuant to R&TC section 19306(a) and FTB Notice 2020-02, the four-year statute of limitations for appellant to timely file a claim for refund expired on July 15, 2020, for the 2015 taxable year. The four-year statute of limitations for appellant to timely file a claim for refund for the 2016 taxable year expired on May 17, 2021, because the April 15, 2021, due date fell within the

¹ See FTB Notice 2020-02, <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.

² See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

second postponement period. However, appellant did not file his claims for refund until August 15, 2021, when appellant filed his 2015 and 2016 tax returns, which is after the last date to file a timely claim for refund based on the four-year statute of limitations plus postponements.

Furthermore, appellant paid his income tax liability in full for 2015 on June 29, 2018, and for 2016 on March 13, 2019; therefore, the respective one-year statute of limitations expired on June 29, 2019, and July 15, 2020 (due to the postponement period). Appellant's claims for refund were therefore untimely because such claims were filed well beyond the expiration of the statute of limitations.

The statute of limitations may not be equitably tolled. (*U.S. v. Brockamp* (1997) 519 U.S. 347.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) This is true even when it is later shown that the tax was erroneously, illegally, or wrongfully collected, or was not owed in the first place. (*Ibid.*)

Appellant contends that his claims for refund should not be barred by the statute of limitations because appellant is recovering after sustaining significant injuries in 2011, which includes memory loss. OTA held a conference during which appellant agreed to submit a form FTB 1564 with a physician's signature, along with supporting medical documentation. Appellant did not reply to OTA's Minutes and Orders following the conference and did not submit any support for his contentions.

Pursuant to R&TC section 19316, the time for filing a claim for refund may be 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 to act on the taxpayer's behalf in financial matters. (R&TC, § 19316.) R&TC section 19316 authorizes FTB to establish procedures for proving financial disability, which FTB has done. (See form FTB 1564.)³

Appellant provided a letter dated September 19, 2011, from BlueCross BlueShield of Alabama denying appellant's request for additional inpatient hospital days. Appellant responded

³ <https://www.ftb.ca.gov/forms/misc/1564.pdf>.

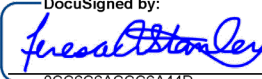
four days later requesting reconsideration. No other evidence was submitted for this appeal. OTA held a conference during which appellant agreed to submit a form FTB 1564 with supporting medical documentation to show that he was financially disabled during the relevant timeframes noted above. However, appellant did not respond to OTA's request for additional briefing. Because appellant did not follow procedures outlined by FTB under its statutory authority and did not submit evidence showing that he was unable to manage his financial affairs by reason of a medically determinable physical or mental impairment that was expected to last for a continuous period of not less than 12 months, appellant has failed to establish an exception to the statute of limitations. Appellant's claims for refund were therefore untimely.

HOLDING

Appellant's claims for refund for the 2015 and 2016 taxable years are barred by the statute of limitations.

DISPOSITION

FTB's actions denying appellant's claims for refund are sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/11/2022