

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. SUSSMAN

) OTA Case No. 22019425
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OPINION

Representing the Parties:

For Appellant: S. Sussman

For Respondent: Joel Smith, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Sussman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,925.89 for the 2014 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant failed to timely file his California Resident Income Tax Return (return) for 2014.
2. On March 8, 2016, FTB sent appellant a Demand for Tax Return.
3. Appellant did not respond to FTB’s Demand for Tax Return.
4. On May 9, 2016, FTB issued appellant a Notice of Proposed Assessment (NPA). Therein, FTB proposed a tax liability of \$3,060, a delinquent filing penalty of \$765, a demand to file penalty of \$2,213.75, applicable interest, and a filing enforcement fee of \$124.47.
5. On July 8, 2016, the NPA became final, and FTB began collection action.

6. FTB received payments totaling \$7,610.17 from February 28, 2017, to October 6, 2017.
7. On May 15, 2021, appellant and his spouse filed their 2014 return. Thereon, appellant reported California taxable income, total tax of \$5,796, and an overpayment of \$98.
8. FTB accepted the return but denied the claim for refund.
9. Appellant timely appealed to the Office of Tax Appeals (OTA).

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. (R&TC, § 19306(a).) R&TC section 19322 provides that every refund claim shall be in writing, signed by the his or her representative, and shall state the specific grounds. 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 statute of limitations period based on reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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., supra.*) Such fixed deadlines may appear harsh because they can be missed, but the occasional resulting harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

Nonetheless, the time for filing a claim for refund may be extended if a taxpayer is “financially disabled,” as defined by R&TC section 19316. 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).) 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.*)

Appellant argues that he was battling alcohol addiction and as a result late filed his 2014 return on May 15, 2021. The due date for the 2014 return was April 15, 2015. The four-year statute of limitations, from the due date for filing a return, deadline is April 15, 2019. Therefore, absent an exception, appellant's claim for refund is barred by the statute of limitations under the four-year analysis in R&TC section 19306.

Likewise, the most recent payment for appellant's 2014 tax year occurred on October 6, 2017. The one-year statute of limitations period for the 2014 tax year period expired on October 6, 2018. Thus, appellant's claim for refund is barred by the statute of limitations under the one-year analysis.

Next, we examine whether appellant was financially disabled within the meaning of R&TC section 19316. Appellant provides no evidence (e.g., a signed affidavit from a physician) to substantiate the argument that his alcoholism rendered him financially disabled within the meaning of R&TC section 19316. In addition, appellant has not addressed why his spouse¹ could not have acted on his behalf in financial matters, such as filing the 2014 return. Therefore, appellant has not shown that the statute of limitations should be extended based on financial disability.

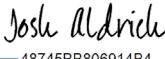
¹ Appellant's spouse is not named in this appeal because she did not sign the Request for Appeal form (OTA Form L-01).

HOLDING

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


DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

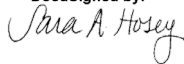
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Josh Aldrich
Administrative Law Judge

We concur:

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Ovsep Akopchikyan
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge

Date Issued: 9/8/2022