

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. KRAMM

) OTA Case No. 21118951
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OPINION

Representing the Parties:

For Appellant: D. Kramm

For Respondent: Eric A. Yadao, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Kramm (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund totaling \$12,331.50¹ for the 2010 through 2012 tax years.

Office of Tax Appeals (OTA) Administrative Law Judges Asaf Kletter, Eddy Y.H. Lam, and Keith T. Long held an electronic oral hearing for this matter on September 27, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has demonstrated that the statute of limitations should be tolled because of his financial disability.

FACTUAL FINDINGS

1. FTB obtained information that appellant held an active real estate license from the Department of Real Estate, but had not filed California individual income tax returns for the 2010 through 2012 tax years. FTB issued Demands for Tax Return (Demands) to

¹ The amount at issue consists of \$5,019.44 for the 2010 tax year, \$2,517.56 for the 2011 tax year, and \$4,794.50 for the 2012 tax year. For the 2010 through 2012 tax years, FTB proposed to assess taxes totaling \$7,060, late-filing and notice and demand penalties totaling \$3,530, collection fees totaling \$433, and interest.

- appellant for each respective tax year and requested that appellant respond within 30 days. Appellant did not respond to the Demands.
2. FTB issued a Notice of Proposed Assessment (NPA) to appellant for each of the 2010 through 2012 tax years, proposing tax, a late-filing penalty, a notice and demand penalty, and a filing enforcement cost recovery fee, plus interest, for each respective tax year. Appellant did not protest the NPAs, and all NPAs went final.
 3. FTB initiated collection action. Between February 8, 2013, and October 11, 2016, FTB received all payments due from appellant for the 2010 through 2012 tax years.
 4. On February 25, 2021, appellant filed his 2010 through 2012 California Resident Income Tax Returns, reporting no tax due. FTB accepted the returns as filed, which it treated as claims for refund for each respective tax year.
 5. By letters dated August 2, 2021, FTB denied appellant's claims for refund because appellant failed to file his returns claiming the refunds before the statute of limitations expired.
 6. 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. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Morosky*, 2019-OTA-312P.)

Appellant does not contest – and OTA finds no error in – FTB's determination that appellant's claims for refund were untimely under the general provisions of R&TC section 19306(a). On appeal, appellant contends that the statute of limitations should be tolled due to his financial disability.

R&TC section 19316 provides that the time for filing a claim for refund may be extended where an individual taxpayer is “financially disabled,” meaning that: (1) “[the] 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. When an appellant alleges financial disability to toll the statute of limitations period to file a timely claim for refund, a physician’s affidavit must be provided that identifies the disability period when appellant was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie, supra*, citing *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Appeal of Estate of Gillespie, supra*.)

Appellant conceded during the hearing that he did not submit an affidavit supporting financial disability, and that he is unable to obtain an affidavit. A physician’s affidavit is required to establish financial disability. (*Appeal of Estate of Gillespie, supra*.) OTA has no authority to waive this requirement for appellant. Because appellant has not provided the required affidavit, appellant has not met his burden to show that he was financially disabled.²

Appellant also contends that FTB’s notices were sent in error and that he did not receive them. He claims he earned no income and did not work during the period, and that the notices were sent to his former address where he no longer resided.³ Even if appellant did not earn income, his untimely claims bar a refund, even if the proposed assessments were in error. (*Appeal of Benemi Partners, L.P., supra*.) Further, it is well established that notices sent by FTB to a taxpayer’s last known address are sufficient, even if the taxpayer does not receive them. (R&TC, § 18416(b); *U.S. v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810; see also *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) R&TC section 18416(c), effective January 1, 2008, provides that “the last known address shall be the address that appears on the taxpayer’s last return filed

² Appellant’s ex-wife testified during the oral hearing that appellant was mentally ill. However, her testimony is not sufficient to meet appellant’s burden. She is not a medical professional, and she did not identify a specific terminal or continuous impairment that rendered appellant unable to manage his affairs. Appellant’s ex-wife also stated that she could not provide dates, which are necessary to establish the period of financial disability.

³ Appellant stated that he constantly moved “from couch to couch” and that his ex-wife, who lived at his former address, had no means to contact him. Appellant’s ex-wife testified that appellant was homeless and constantly moving, and that she was unable to contact him for a period of time.

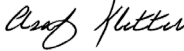
with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer.” As appellant did not provide FTB notification of a different address, FTB appropriately continued to use the last known address in its notices.

HOLDING

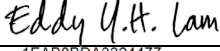
Appellant has not demonstrated that the statute of limitations should be tolled because of his financial disability.


DISPOSITION

FTB’s actions in denying appellant’s claims for refund are sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 10/25/2022