

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 22019589
M. FRENCH AND)
C. FRENCH)
_____)

OPINION

Representing the Parties:

For Appellants: M. French
C. French

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Kyu Bin Kang, Graduate Student Assistant

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. French and C. French (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$7,207.37 for the 2013 tax year.

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

ISSUE

Whether the statute of limitations bars appellants’ claim for refund for the 2013 tax year.

FACTUAL FINDINGS

1. Appellants did not timely file a California income tax return for the 2013 tax year.
2. Subsequently, respondent received information indicating that appellant-husband may have received sufficient income to require the filing of a tax return for the 2013 tax year. As such, respondent issued a Demand for Tax Return (Demand), but appellants did not timely file a tax return or respond to the Demand.

3. Following appellants' nonresponse to the Demand, respondent issued a Notice of Proposed Assessment (NPA)¹ for the 2013 tax year. Appellants did not respond to the NPA, and the proposed liability became final. Thereafter, respondent commenced collection actions, and respondent collected \$7,619.74 from appellants on July 31, 2017.
4. On October 15, 2021, appellants filed a 2013 California Resident Income Tax Return, reporting a tax due of \$69. Appellants self-assessed interest and penalties for late filing or late payment in the amount of \$80, resulting in a total amount due of \$149. A payment of \$149 was enclosed with the return.²
5. Respondent treated appellants' 2013 tax return as a claim for refund, which it denied.
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 filed within the extended due date; (2) four years from the due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. In an action for refund, the taxpayer has the burden of proof to show entitlement to a refund by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Beyond narrow exceptions not relevant here,³ a taxpayer's failure to file a claim for refund within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The occasionally harsh

¹ Respondent did not provide copies of the Demand or NPA in its briefing.

² Respondent subsequently transferred the payment to cover a balance owed for the 2014 tax year, pursuant to R&TC section 19301(a).

³ R&TC section 19316 provides a narrow exception for suspending the statute of limitations where an individual taxpayer is deemed "financially disabled." A financially disabled taxpayer is an individual taxpayer who is unable to manage financial affairs by reason of medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period not less than 12 months. (R&TC, § 19316(b)(1).)

results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-197P.)

Appellants filed their 2013 tax return on October 15, 2021, which respondent treated as a refund claim. Since the return was not timely filed within the extended due date, the four-year statute of limitations required the claim for refund to be filed four years from the original due date of the return. As a result, the deadline to file a claim for refund was April 15, 2018. Respondent collected a payment of \$7,619.74 from appellants on July 31, 2017. Therefore, the one-year statute of limitations to file a claim for refund of the collected payment expired on July 31, 2018.

Here, it is undisputed that appellants filed their claim for refund on October 15, 2021, which was after the expiration of the statute of limitations. On appeal, appellants assert that respondent “withdrew an arbitrary amount from [their] bank account.” However, appellants were required to file a claim for refund within the statutory period, even if the tax was alleged to have been erroneously or wrongfully collected. (See *Appeal of Benemi Partners, L.P.*, *supra*.) Furthermore, appellants have not pointed to any California statute as applied to these facts that would allow the tolling of the statute of limitations in this appeal.

HOLDING

The statute of limitations bars appellants' claim for refund for the 2013 tax year.

DISPOSITION

Respondent's action in denying the claim for refund is sustained.

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Eddy Y.H. Lam

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Eddy Y.H. Lam

Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour

Administrative Law Judge

Date Issued: 10/24/2022