

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21129382
J. RYMAN)
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OPINION

Representing the Parties:

For Appellant: Dorothy Kennedy
For Respondent: Carolyn S. Kuduk, Tax Counsel III
Nancy Parker, Tax Counsel IV

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant J. Ryman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her claim for refund of \$885.48 for the 2014 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. These procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Josh Lambert held an oral hearing for this matter in Sacramento, California, on August 31, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Whether appellant’s claim for refund for the 2014 tax year is barred by the statute of limitations.¹

¹ Appellant paid the unabated collection cost recovery fee and does not dispute the fee. In addition, the fee is not part of appellant’s claim for refund that was denied by FTB. Consequently, FTB’s imposition of the collection cost recovery fee is upheld and will not be discussed further.

FACTUAL FINDINGS

1. FTB received information that appellant made mortgage payments for the 2014 tax year, and determined that appellant may have earned sufficient income requiring her to file a California return.
2. Appellant did not timely file a 2014 return. FTB issued a Demand for Tax Return for tax year 2014, requiring that appellant file a return, submit a copy of a return if previously filed, or provide information showing she had no filing requirement.
3. After no response was received, FTB issued a Notice of Proposed Assessment (NPA), which estimated appellant's income, and proposed additional tax of \$479.00, a late filing penalty of \$135.00, a notice and demand penalty of \$119.75, and a filing enforcement cost recovery fee of \$84.00, plus interest.²
4. Appellant did not respond to the NPA and the proposed assessment became final. FTB issued a Notice of State Income Tax Due, stating that appellant owed a balance of \$872.62. No payment was made so FTB pursued involuntary collection of the balance and imposed a collection cost recovery fee of \$287.00.
5. On March 8, 2018, FTB received a payment of \$719.00 from the State Controller's Office, which it applied to appellant's 2014 tax year account. On June 28, 2018, FTB collected a payment of \$453.00, which it also applied to appellant's 2014 tax year account.
6. On July 1, 2021, appellant filed an amended California income tax return (Form 540X), reporting income and tax due of zero, and claiming a refund of \$865. On the return, appellant stated that she had no income, a third party paid her mortgage, and the mortgage interest paid was not claimed by the third party.
7. FTB accepted the return as filed and revised appellant's tax to zero and abated the penalties and filing enforcement cost recovery fee. FTB did not abate the collection cost recovery fee of \$287, which remained due.
8. FTB treated the amended return as a claim for refund. FTB calculated a total overpayment of \$885.48 for the 2014 tax year by subtracting the unabated collection cost

² The proposed tax was calculated based on FTB's estimate of appellant's income. The NPA states that the estimate of income was calculated by multiplying the amount of mortgage interest paid by appellant by six, and that the 6:1 ratio of mortgage to interest paid to income is based on an analysis of tax returns filed by California residents.

recovery fee of \$287.00 from total credits of \$1,172.48, consisting of two payments of \$719.00 and \$453.00 plus a reversal of a write off in the amount of \$0.48. In a notice dated December 9, 2021, FTB denied the claim for refund in the amount of \$885.48 based on the expiration of the statute of limitations.

9. This timely appeal followed.

DISCUSSION

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 original 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).) 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 based on reasonable cause or equity. (*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.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

R&TC section 19316 provides that the period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is "financially disabled," as defined in R&TC section 19316(b). For purposes of R&TC section 19316, financial disability exists 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/registered domestic partner or other legally authorized person who can act on the taxpayer's behalf in financial matters.³ (R&TC, § 19316(b)(1)-(2).) When a taxpayer alleges financial disability to suspend and thus extend the period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was

³ See FTB Form 1564, Financially Disabled - Suspension of the Statute of Limitations.

unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

Appellant's return, which was filed on July 1, 2021, is treated as her claim for refund. Because appellant did not file the return by the extended due date of October 15, 2015, the four-year statute of limitations began to run on the original due date of appellant's 2014 return, April 15, 2015, and expired four years later on April 15, 2019. (R&TC, § 19306(a).) Appellant's claim for refund is therefore barred under the four-year statute of limitations period.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) As for the one-year statute of limitations, the two payments for appellant's 2014 tax year were applied on March 8, 2018, and June 28, 2018, respectively. One year from the later of these two dates is June 28, 2019. Because appellant's claim for refund was not filed until July 1, 2021, which is after this date, appellant's claim for refund is also barred under the one-year statute of limitations.

Appellant asserts that medical issues prevented her from working and that her mortgage payments and expenses were made by a friend, who did not claim the expenses on his tax return. Appellant argues that it is unjust that she cannot receive a refund, because the tax was assessed incorrectly and that she does not owe any tax. As discussed above, a taxpayer's failure to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date, even when it is later shown that the tax was not owed in the first instance. (*Appeal of Estate of Gillespie, supra; Appeal of Benemi Partners, L.P., supra.*)

Appellant does not provide a specific reason as to why she did not file her claim for refund earlier but speculates it may be due to pressures from difficult circumstances during that period of time. To the extent that appellant contends that reasonable cause, such as medical issues or difficult circumstances, prevented her from filing her refund claim earlier, as discussed above, there is no reasonable cause basis for waiving the statute of limitations. (See *Appeal of Benemi Partners, L.P., supra.*)

In addition, appellant does not provide evidence, such as a physician's affidavit or medical records, to show that the statute of limitations should be suspended due to financial disability, pursuant to R&TC section 19316. At the hearing, appellant stated that she had no evidence to establish any such medical issues or other difficult circumstances. Unsupported

assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.) Therefore, appellant has not shown that the statute of limitations should be suspended due to financial disability.

HOLDING

Appellant's claim for refund for the 2014 tax year is barred by the statute of limitations.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Josh Lambert
Administrative Law Judge

Date Issued: 11/9/2022