

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220410205
D. AUERBACH (DEC'D))
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OPINION

Representing the Parties:

For Appellant: Richard Auerbach, Trustee

For Respondent: Leoangelo C. Cristobal, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Auerbach (dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$741 for the 2015 tax year.

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, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant's claim for refund for the 2015 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. The trustee of appellant's estate filed appellant's 2015 California return on December 23, 2021.
2. FTB acknowledged the 2015 California return as a claim for refund in the amount of \$741, which represents an estimated tax payment made on April 15, 2015.

3. FTB denied the claim for refund on the basis that it was barred by the statute of limitations.
4. This timely appeal followed.

DISCUSSION

Appellant asserts that she is entitled to a refund because: (1) appellant lived in a memory care facility in 2015 due to Alzheimer’s disease; (2) appellant’s son (the brother of her estate’s trustee) represented to the trustee that appellant had filed her 2015 tax return; (3) the claim for refund “is not stale”; (4) “no relevant evidence has been lost”; (5) FTB has not been unfairly prejudiced by the late tax filing; and (6) the refund is owed to appellant’s estate. OTA disagrees for the following reasons.

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no equitable basis under California law for suspending the statute of limitations. (*Ibid.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Appellant’s refund claim is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. The first statute of limitations period is not applicable because appellant did not file a 2015 California return pursuant to a valid extension of time to file. The second statute of limitations period expired on April 15, 2020, but was extended to July 15, 2020, due to COVID-19. (R&TC, § 18566; FTB Notice 2020-02.) Lastly, the third statute of limitations period expired on April 15, 2017, because appellant’s estimated tax payment toward the 2015 tax year was deemed paid on the due date of the return, April 15, 2016. (R&TC, § 19002(c)(2).) Accordingly, appellant’s claim for refund filed on December 23, 2021, is barred by the statute of limitations.

While the time for filing a claim for refund may be suspended if a taxpayer is “financially disabled,” as defined in R&TC section 19316, there is no evidence in the record establishing that

appellant was financially disabled at any time. A taxpayer is considered financially disabled if: (1) the “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(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.*)

There is no evidence appellant was financially disabled at any time. Accordingly, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2015 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund for the 2015 tax year is sustained.

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan

Administrative Law Judge

Date Issued: 11/7/2022