

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21098677
N. WELYHORSKYJ AND)
S. EVANS (DEC'D))
_____)

OPINION

Representing the Parties:

For Appellants: N. Welyhorskyj
For Respondent: Phillip C. Kleam, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Welyhorskyj and S. Evans (Dec'd) (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claims for refund of \$3,648 for the 2013 tax year and \$1,727 for the 2014 tax year.

OTA decides this matter based on the written record¹ pursuant to the provisions set forth in the Office of Tax Appeals' Small Case Program (Cal. Code Regs, tit. 18, § 30209.1 et seq.).²

ISSUE

Whether appellants' claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. For the 2013 tax year, appellants had a withholding credit of \$7,335, and for the 2014 tax year, appellants had a withholding credit of \$5,563.
2. Appellants untimely filed their 2013 and 2014 California tax returns on April 15, 2021.

¹ Appellants did not respond to OTA's Notice of Oral Hearing and, thus, waived the right to an oral hearing.

² Appellants made a qualifying and irrevocable election to have this matter decided under the Small Case Program.

3. Respondent treated appellants' 2013 and 2014 California tax returns as claims for refund.
4. Respondent denied appellants' claims for refund on the basis that the claims were barred by the statute of limitations.
5. Appellants timely filed this appeal.

DISCUSSION

The taxpayer has the burden of proof to show that a claim for refund is timely, and the taxpayer is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, *supra*.)

Since no timely returns were filed for the 2013 and 2014 tax years, the applicable claim for refund statute of limitations here is the later of four years from the last day to file the return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) Otherwise, the claim for refund is untimely, and no credit or refund is allowed. (*Appeal of Estate of Gillespie*, *supra*.)

For the 2013 tax year, the four-year statute of limitations period expired on April 15, 2018 (four years from the original due date of April 15, 2014); and for the 2014 tax year, the four-year statute of limitations period expired on April 15, 2019 (four years from the original due date of April 15, 2015). (R&TC, § 18566.) Appellants' claims for refund for the 2013 and 2014 tax years were filed on April 15, 2021. Therefore, appellants filed their claims for refund beyond the four-year statute of limitations period for both the 2013 and 2014 tax years.

As for the one-year statute of limitations period, since appellants filed their claims for refund for the 2013 and 2014 tax years on April 15, 2021, any overpayment made more than one year prior is barred. For the 2013 tax year, appellants had a withholding credit of \$7,335, which is deemed paid on the original return due date of April 15, 2014, and requested a refund of \$3,648. (R&TC, § 19002.) Similarly, for the 2014 tax year, appellants had a withholding credit of \$5,563, which is deemed paid on the original return due date of April 15, 2015, and requested a refund of \$1,727. (*Ibid.*) Since appellants filed their refund claims on April 15, 2021, over one

year after the date of those overpayments, these overpayments are barred under the statute of limitations.

Appellants also assert that appellant S. Evans was ill beginning in 2013. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Estate of Gillespie, supra.*) A taxpayer's untimely filing of a refund claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

The time for filing a claim for refund may be extended if a taxpayer is "financially disabled," as defined in R&TC section 19316. 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).)

Here, appellants have submitted no evidence to support their contention that appellant S. Evans was suffering from illness. In addition, appellants have not shown that N. Welyhorskyj could not have acted on appellant S. Evans' behalf. Thus, appellants have not met their burden of establishing that they were financially disabled.³

³ In addition, appellants note their struggles to pay bills and ask that OTA decides this appeal based on humanitarian and compassionate reasons. However, as relevant to this appeal, OTA's jurisdiction is limited to determining the correct amount of a taxpayer's California personal income tax liability. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) OTA, therefore, lacks the authority to forgive a liability or make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal of Estate of Luebbert, Deceased, and Luebbert* (71-SBE-028) 1971 WL 2708.)

HOLDING

Appellants' claims for refund for the 2013 and 2014 tax years are barred by the statute of limitations.

DISPOSITION

OTA sustains respondent's actions.

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Huy "Mike" Le
Administrative Law Judge

Date Issued: 12/6/2022