

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21108905
L. NASH AND)
D. NASH)
_____)

OPINION

Representing the Parties:

For Appellants: L. Nash and D. Nash
For Respondent: Nancy Parker, Tax Counsel IV

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Nash (appellant-husband) and D. Nash (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,453.56 for the 2016 tax year.¹

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

ISSUE²

Whether the statute of limitations bars appellants’ claim for refund for the 2016 tax year.

¹ Appellants’ 2016 California tax return requested a refund of \$15,988.00, based on amounts collected by FTB. However, only \$1,453.56 of the amount collected by FTB was applied to appellants’ 2016 tax year account. Thus, \$1,453.56 is the correct amount at issue with respect to appellants’ 2016 tax year as reflected in FTB’s claim denial letter for the 2016 tax year giving rise to this appeal. Appellants also seek a refund of \$15,510.11, which was collected by FTB and applied to appellants’ 2015 tax year account. However, appellants have not filed a tax return or a claim for refund for the 2015 tax year, and as such, there was no claim for refund for FTB to deny. Without a claim for refund for the 2015 tax year, and a corresponding denial (or deemed denial) of such claim for refund, OTA lacks jurisdiction to consider any refund appellants seek associated with the 2015 tax year. (Cal. Code Regs., tit. 18, § 30103(a).)

² Appellants also argue on appeal that the late filing penalty and interest should be abated and refunded. However, when FTB accepted appellants’ 2016 return reporting zero tax, the interest and penalties were also eliminated.

FACTUAL FINDINGS

1. Appellants did not timely file a California income tax return for the 2016 tax year.
2. FTB received information that in 2016 appellant-husband held an active professional/business license or sales permit and/or that employees worked for appellant-husband. On that basis, FTB believed appellant-husband received sufficient income in 2016 to have a filing requirement. Consequently, FTB issued a Demand for Tax Return (Demand) for the 2016 tax year to appellant-husband, but appellant-husband did not file his tax return or respond to the Demand.
3. Following appellant-husband's nonresponse to the Demand, FTB estimated appellant-husband's income using the information available to it and issued a Notice of Proposed Assessment (NPA) for the 2016 tax year. Appellant-husband did not respond to the NPA, and the proposed liability became final.
4. FTB subsequently sent appellant-husband a Notice of State Income Tax Due and a Balance Due Notice, both of which demanded payment and informed appellant-husband of FTB's intent to pursue collection actions.³
5. On October 3, 2019, and October 9, 2019, FTB received payments through a state tax lien totaling \$1,453.56, which satisfied appellants' assessed liability for the 2016 tax year (including penalties and interest). The payments were comprised of the following: (1) a \$1,272.16 payment collected on October 3, 2019; (2) an \$89.39 payment collected on October 3, 2019; and (3) a \$92.01 payment collected on October 9, 2019.⁴
6. On September 15, 2021, appellants filed their joint 2016 California tax return, reporting no taxes due and claiming a refund of \$15,988.⁵
7. FTB denied the claim for refund and this timely appeal followed.

³ The Balance Due Notice also included a separate line item for the 2015 tax year, as appellants had not yet paid their liability for the 2015 tax year.

⁴ FTB collected a second payment on October 9, 2019, in the amount of \$15,418, through the state tax lien. FTB used the \$15,418 payment to satisfy appellants' 2015 tax liability. As previously stated, OTA does not have jurisdiction over the 2015 tax year. (See fn. 1.)

⁵ See footnote 1.

DISCUSSION

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).) 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.)

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.) 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 results from fixed deadlines are redeemed by the clarity imparted to legal obligations. (*Ibid.*)

Here, because appellants did not file their 2016 tax return pursuant to a valid extension of time, appellants cannot avail themselves of the first four-year statute of limitations under R&TC section 19306(a).

For the claim for refund to be timely under the second four-year statute of limitations, appellants were required to file the claim by April 15, 2021, except that FTB postponed the deadline to May 17, 2021.⁶ Appellants, however, filed their 2016 tax return, which FTB treated as a claim for refund, on September 15, 2021 – nearly four months after the expiration of the postponed deadline. Therefore, appellants' claim for refund is time barred under the second four-year statute of limitations.

With respect to the one-year statute of limitations, FTB's \$1,453.56 assessment for the 2016 tax year was paid in October 2019 via three payments: (1) a \$1,272.16 payment collected on October 3, 2019; (2) an \$89.39 payment collected on October 3, 2019; and (3) a \$92.01 payment collected on October 9, 2019. As such, appellants had until October 3 and 9, 2020, to

⁶ FTB postponed the deadline for individual taxpayers to file a claim for refund for the 2016 tax year to May 17, 2021. (See Franchise Tax Board, *State Postpones Deadline For Claiming 2016 Tax Refunds to May 17, 2021*, news release (Apr. 26, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>.)

file a claim for refund for those respective payments. Because appellants filed their 2016 tax return, which FTB treated as a claim for refund, on September 15, 2021 (almost one year late), appellants' claim for refund was also untimely under the one-year statute of limitations.

R&TC section 19316 provides a narrow exception for suspending the statute of limitations where an individual taxpayer is deemed "financially disabled." Under this provision, the time for filing a claim for refund may be suspended during the period in which an individual taxpayer is financially disabled (as defined in R&TC section 19316(b)) if the taxpayer can establish such financial disability in accordance with the procedures and requirements specified by FTB. (R&TC, § 19316(a).) Pursuant to R&TC section 19316(b), a taxpayer is considered financially disabled if: (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 person who is legally authorized to act on the individual taxpayer's behalf in financial matters during the relevant period. FTB imposes the additional requirement that a taxpayer submit an affidavit from a physician that identifies the period during which the taxpayer's impairment rendered the taxpayer incapable of managing his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*)

In their briefs, appellants indicated that one appellant suffered a medical condition in 2015 and 2016 necessitating electro-shock therapy on February 16, 2016. Appellants did not, however, provide the requisite affidavit from a physician. Instead, appellants provided a portion of a medical billing statement dated May 16, 2016, evidencing several heart-related services provided between February 3, 2016, and February 12, 2016 (including an electric shock on February 12, 2016). However, the portion of the medical billing record appellants provided does not include the name of the patient who received the listed services, and there are no services listed beyond February 12, 2016. Therefore, even if the Office of Tax Appeals were to accept that these services were provided to one of the appellants, there is no evidence that the physical impairment lasted beyond February 2016. Nor can the billing statement stand in lieu of an affidavit from a physician.

Moreover, R&TC section 19316 only allows the statute of limitations to be tolled when there is no spouse or other person who is legally authorized to act on the individual taxpayer's behalf in financial matters during the relevant period. (R&TC, § 19316(b)(2).) In this case,

there is no evidence in the record that both spouses suffered from a physical or mental impairment or that the unimpaired spouse was not legally authorized to act on behalf of both appellants with respect to filing a claim for refund. Thus, appellants have not established that they were financially disabled pursuant to the provisions in R&TC section 19316(b), and therefore, the statute of limitations was not suspended and appellants' claim for refund is time-barred.

HOLDING

The statute of limitations bars appellants' claim for refund for the 2016 tax year.

DISPOSITION

FTB's action is sustained in full.

DocuSigned by:
Lauren Katagihara
F696B34040D9470...
Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:
Richard Tay
F8E81582726E448...
Richard Tay
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 2/28/2023