

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**E. PORTER**

) OTA Case No. 220911391  
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**OPINION**

Representing the Parties:

For Appellant:

E. Porter

For Respondent:

Noel Garcia-Rosenblum, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Porter (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$953.20 for the 2015 tax year.

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

**ISSUE**

Whether appellant’s claim for refund is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2015 California income tax return.
2. FTB obtained information that appellant made mortgage payments during 2015, indicating that appellant may have had sufficient income to prompt a filing requirement for the 2015 taxable year.<sup>1</sup>
3. On April 26, 2017, FTB issued a Demand for Tax Return to appellant for the 2015 taxable year. Appellant did not respond or file a California income tax return.

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<sup>1</sup> For the 2015 taxable year, the minimum California adjusted gross income filing threshold for a single filer under 65 years of age with no dependents was \$13,005.

4. On June 26, 2017, FTB issued a Notice of Proposed Assessment (NPA) for the 2015 taxable year which estimated appellant's income and proposed tax of \$552, plus penalties, interest, and a filing enforcement fee. The NPA became due and payable when appellant failed to timely protest it.
5. On September 25, 2017, FTB issued appellant a Notice of State Tax Due advising appellant of the balance due.
6. On December 7, 2017, appellant made a payment of \$952.34<sup>2</sup> on his account for the 2015 tax year.
7. On August 8, 2022, appellant filed a 2015 California personal income tax return reporting zero tax liability. FTB processed the return and treated it as a claim for refund for the 2015 taxable year.
8. FTB denied the claim for refund on the basis that appellant did not file it within the applicable statute of limitations period.
9. This timely appeal followed.

#### DISCUSSION

If it is determined that there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law, for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayers, and the balance shall be refunded to the taxpayers. (R&TC, § 19301(a); *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayers have the burden of proof to show that the claim for refund is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.) The burden of proof requires proof by a preponderance of the evidence, unless there is an exception provided by law. (Cal. Code Regs., tit. 18, § 30219(c).)

R&TC section 19306(a) provides that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of*

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<sup>2</sup> FTB erroneously computed the amount of appellant's overpayment to be \$953.20, a difference of \$0.86.

*Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) A taxpayer’s untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid*; *U.S. v. Dalm* (1990) 494 U.S. 596.) Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Cornbleth, supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222.)

The first four-year statute of limitations period does not apply in this case because appellant did not timely file his 2015 tax return. For the second four-year statute of limitations period, appellant’s 2015 taxable year return was due on April 15, 2016, and the period to timely file a claim for refund would have expired on April 15, 2020. However, due to the COVID-19 State of Emergency, FTB extended the refund claim statute of limitations in limited cases. For purposes of claiming a refund claim within four years of the original filing due date, if the period to claim a refund expired during the period of March 12, 2020, through July 15, 2020, the claim is considered timely if filed on or before July 15, 2020.<sup>3</sup> Appellant filed his claim for refund on August 8, 2022, over two years later. Accordingly, appellant’s claim for refund is untimely under the second four-year statute of limitations period.

With respect to the final statute of limitations period, appellant’s claim for refund would be timely with regard to any payments made during the period running from August 8, 2021, through August 8, 2022. However, no payments were made within this one-year period. The payment received on December 7, 2017, occurred more than three years prior. Thus, appellant’s claim for refund of \$953.20 is untimely under the final statute of limitations period.

While, as noted above there is no general reasonable cause or equitable basis for suspending the statute of limitations (*Appeal of Benemi Partners, supra*), the statute of limitations may be tolled for the period of time during which the taxpayer is considered “financially disabled” as defined in R&TC section 19316(b). R&TC section 19316 identifies two requirements to prove an individual taxpayer is financially disabled: (1) the taxpayer must be 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

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<sup>3</sup> See FTB Notice 2020-02 (March 30, 2020), available at: <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.

a continuous period not less than 12 months; and (2) the taxpayer must have no spouse or any other person legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(1), (2); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by FTB. (R&TC, § 19316(a).) Those procedures and requirements specified by FTB includes the use of FTB Form 1564, which requires, in part, an affidavit from a physician signed under penalty of perjury, stating to the best of the physician's knowledge, the specific period during which the patient was prevented from managing his or her financial affairs. (*Appeal of Gillespie, supra.*)

Appellant asserts he was unable to timely submit a claim for refund because of serious ongoing health issues. While appellant has described a medical condition that could possibly warrant a finding that appellant was financially disabled, the law requires a physician's affidavit and the Office of Tax Appeals (OTA) cannot waive the requirement. FTB provided appellant with a physician's affidavit that could be completed, but he did not provide a completed form in response. Without a physician's affidavit, the period of financial disability cannot be established for purposes of tolling the statute of limitations. FTB's denial of the claim for refund must be sustained on this evidentiary basis.

HOLDING

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

DISPOSITION

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

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*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 7/3/2023