

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

In the Matter of the Appeal of:	)	OTA Case No. 221111901
	)	
<b>C. VILLANUEVA AND</b>	)	
<b>M. VILLANUEVA (DEC'D)</b>	)	
	)	

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**OPINION**

Representing the Parties:

For Appellants: C. Villanueva

For Respondent: Joel M. Smith, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Villanueva and M. Villanueva (Dec'd) (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,356.43 for the 2017 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUE<sup>1</sup>**

Whether appellants are entitled to any additional refund for the 2017 tax year.

**FACTUAL FINDINGS**

1. Appellant C. Villanueva's employer paid wage income to her for the 2017 tax year and withheld California income tax from her 2017 wage income. Appellant C. Villanueva also received miscellaneous income reported by a third party.
2. Appellants did not timely file their joint 2017 California individual income tax return (return).

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<sup>1</sup> Appellant C. Villanueva raises the issue of a recent FTB levy in the amount of \$1,672.95. However, appellant C. Villanueva has not asserted that the recent FTB levy is related to the 2017 tax year. OTA does not have jurisdiction over this issue and does not discuss it further.

3. FTB issued appellant C. Villanueva a Notice of Proposed Assessment (NPA) for the 2017 tax year estimating appellant C. Villanueva's income, crediting withholding reported by her employer, and proposing to assess tax in excess of the reported withholding. Appellant C. Villanueva did not respond and the NPA went final.
4. FTB initiated collection action. Between May 15, 2021, and February 15, 2022, FTB collected payments totaling \$7,953.89 that satisfied the 2017 tax year liability.
5. The two final collection payments credited to appellants' 2017 tax year account were \$960.17 on October 12, 2021, and \$1,959.46 on February 15, 2022.
6. On October 15, 2022, appellants filed their joint 2017 return reporting \$0 total tax and claiming an overpayment of tax. FTB determined that appellants were claiming a refund of all amounts paid or withheld for the 2017 tax year.<sup>2</sup>
7. FTB refunded \$1,584.77<sup>3</sup> to appellants, credited a total of \$377.75 to appellants' other tax years, and denied appellants' remaining claim for refund of \$6,356.43.<sup>4</sup>
8. This timely appeal followed. On appeal, appellants request a refund of all overpaid amounts for the 2017 tax year.

### DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 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. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*), citing *U. S. v. Brockamp* (1997) 519 U.S. 347, 351). The language of the statute of limitations is explicit and must be strictly

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<sup>2</sup> Appellants' withholding and payments for the 2017 tax year totaled \$8,631.89 (withholding of \$678.00 plus payments of \$7,953.89 = \$8,631.89).

<sup>3</sup> The refunded amount includes \$3.06 in allowed interest.

<sup>4</sup> The remaining claim was computed as follows: appellants' total withholding and payments of \$8,631.89, plus \$3.06 in allowed interest, minus a refund of \$1,584.77 to appellants, a credit of \$377.75 to appellants' other tax years, and a collection cost recovery fee of \$316, which FTB imposed pursuant to its collection action.

construed. (*Benemi, supra.*) 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.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

OTA finds no error in FTB's determination that appellants' 2017 claim for refund was untimely under the four-year statute of limitations. Appellants did not file their 2017 tax return on extension, so the four-year statute of limitations concerning the extended due date is inapplicable. Concerning the second four-year statute of limitations beginning from the return due date, appellants' 2017 return was due on April 15, 2018. However, appellants filed their 2017 return on October 15, 2022, more than four years after it was due.

Concerning the one-year statute of limitations, appellants' return, their 2017 claim for refund, was filed on October 15, 2022. Any payments made on or after October 15, 2021, would be timely under the one-year statute of limitations. Appellants' withholding payments and the payments collected by FTB are separately analyzed in the following two paragraphs.

Regarding withholding payments made on behalf of appellant C. Villanueva, “[f]or purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return.” (Cal. Code Regs., tit. 18, § 19002(d)(1); see also R&TC, § 19002(c)(1).) Here, the original due date for appellants' 2017 return was April 15, 2018. Thus, their 2017 claim for refund was untimely under the one-year statute of limitations as applicable to the withholdings made on behalf of appellant C. Villanueva.

Concerning the payments collected by FTB, as noted above, appellants' 2017 claim for refund was filed on October 15, 2022, and under the one-year statute of limitations, would be timely for any payments made on or after October 15, 2021. On February 15, 2022, FTB collected \$1,959.46 from appellants. FTB refunded \$1,584.77, including \$3.06 in allowed interest, and credited the remainder of \$377.75 to other tax years.<sup>5</sup> The remainder of collections from appellants on the 2017 liability were made before October 15, 2021, and thus outside of the one-year statute of limitations period. Therefore, OTA finds no error in FTB's determinations

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<sup>5</sup> Appellants were refunded or credited a total of \$1,962.52 (a refund of \$1,584.77, a credit of \$377.75, and allowed interest of \$3.06). \$1,962.52 is equal to the \$1,959.46 collected from appellants, plus allowed interest of \$3.06.

under the one-year statute of limitations that appellants' 2017 claim for refund was timely only as to the \$1,959.46 collection payment, and that the remainder of the payments was untimely.

Appellant C. Villanueva contends on appeal that a full refund should be allowed for the 2017 overpayment, and raises issues of financial hardship. Appellant C. Villanueva asserts that her husband, M. Villanueva passed away in July of 2022 because of the stress of their financial situation. Appellant C. Villanueva also asserts that she is living from paycheck to paycheck and with child rearing obligations, and that she also faces financial and emotional stress.

R&TC section 19316 is an exception to the statute of limitations that extends the time for filing a claim for refund if the taxpayer is "financially disabled," meaning that: (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 legally authorized person to act on the taxpayer's behalf in financial matters. When a taxpayer alleges financial disability to toll the statute of limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

Appellant C. Villanueva contends that appellants faced financial difficulty and asserts that their financial stress took a toll on their health, including causing M. Villanueva's passing. However, appellant C. Villanueva has not specifically alleged that either appellant M. Villanueva or appellant C. Villanueva was financially disabled. The law requires a physician's affidavit and OTA cannot waive this requirement. (*Appeal of Estate of Gillespie, supra.*) Without a physician's affidavit, the period of financial disability cannot be established for purposes of tolling the statute of limitations and FTB's determination must be upheld.

Furthermore, a taxpayer will not be considered financially disabled for any period where their spouse or any other person is legally authorized to act on their behalf. (R&TC, § 19316(b)(2).) Here, there is no evidence that appellant C. Villanueva, appellant M. Villanueva's spouse, was unable to file their return or hire a tax preparer during the relevant time period (i.e., between April 15, 2018, the due date of appellants' 2017 return, and October 15, 2022, the date appellants filed their 2017 return).

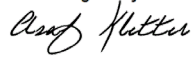
A taxpayer's untimely filing of a claim for any reason bars a refund, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Benemi, supra.*) As mentioned above, on appeal, appellant C. Villanueva describes appellants' financial stress, the passing of her spouse M. Villanueva, and her own financial and emotional stress. While OTA is sympathetic to her situation, these are reasonable cause type arguments. There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) Here, appellants' untimely filing of their 2017 return bars any additional refund.

HOLDING


Appellants are not entitled to any additional refund for the 2017 tax year.

DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 7/19/2023