

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. MCCARTY

) OTA Case No. 221011696
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: D. McCarty

For Respondent: Joel M. Smith, Attorney

For Office of Tax Appeals: Rachel Lucchini,
Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. McCarty (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,495.75 plus interest for the 2017 tax year.

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

ISSUE

Whether appellant filed a timely claim for refund for the 2017 tax year with respect to payments made more than one year prior to October 3, 2022.

FACTUAL FINDINGS

1. Appellant did not file a timely tax return for the 2017 year.
2. Respondent received information that appellant received income sufficient to trigger the filing requirement and on September 19, 2019, issued a 2017 Demand for Tax Return (Demand). Respondent issued a Notice of Proposed Assessment (NPA) on November 25, 2019, proposing to assess tax of \$1,038.00. The NPA also imposed a late

filing penalty of \$259.50, a notice and demand (demand) penalty of \$715.00, a filing enforcement fee of \$93.00, and applicable interest. Appellant did not respond to the NPA, and the assessment became final. Respondent began collection actions and received payments totaling \$4,232.31 during the period April 15, 2018, through January 5, 2022.

3. Appellant filed an untimely 2017 California tax return on October 3, 2022, and reported a tax liability of \$889.00. After applying withholding credits of \$1,821.00, appellant claimed a refund of \$932.00.
4. Respondent accepted the return, which it treated as a claim for refund. Respondent made adjustments to appellant's account to reflect the total tax payments of \$3,088.79. Of that amount, respondent issued a refund of \$1,593.04 on October 13, 2022. Respondent denied the remainder of the claimed refund (\$1,495.75) due to the expiration of the statute of limitations.
5. This timely appeal followed.

DISCUSSION

As relevant here, if there has been an overpayment imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount then due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) A claim for refund must be filed within four years from the date of the original tax return, or four years from the date the return was filed if it was filed by the automatic extended due date, or one year from the date of the overpayment, whichever is later. (R&TC, § 19306(a).) The taxpayer bears the burden of proof in showing a timely claim and his or her entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) Such deadlines may appear harsh when missed, but the resulting occasional harshness is validated by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.) It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Failure to

file a claim for refund or credit within the statutory period prevents the taxpayer from doing so later. (*Appeal of Estate of Gillespie, supra.*)

However, the statute of limitations period may be suspended, and thus the period for filing a claim for refund extended, if the taxpayer is financially disabled. (R&TC, § 19316(a).) For purposes of this section, the individual taxpayer is financially disabled if they are unable to manage their financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of not less than 12 months. (R&TC, § 19316(b)(1).) To establish financial disability, R&TC section 19316(a) provides that the taxpayer must adhere to respondent's procedures. Here, respondent requests the filing of Franchise Tax Board (FTB) Form 1564, which requires, in part, a physician confirmation of physical or mental impairment. This period of financial disability must occur during the limitations period. (*Appeal of Gillespie, supra.*)

Here, appellant failed to file a 2017 tax return by the due date of April 15, 2018, or within the automatic extension period. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date and expired four years later, on April 15, 2022. Appellant filed her claim for refund (i.e., the 2017 return) on October 3, 2022. Accordingly, under R&TC section 19306, the four-year statute of limitations is inapplicable.

The alternative one-year statute of limitation applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Respondent issued a refund of \$1,593.04 for payments made within one year of October 3, 2022, the date appellant filed her return. However, appellant's remaining payments were made more than one year before the claim for refund was filed, including appellant's withholding credits, which were credited on April 15, 2018. This is consistent with R&TC section 19002(c)(1), which specifies that tax withholdings are deemed paid on the original due date of the return. Thus, appellant's claim for refund is barred under the one-year statute of limitations for all payments made more than one year before October 3, 2022.

Appellant asserts that the statute of limitations for a claim for refund should be suspended. Appellant asserts that illness and subsequent treatment, which began in 2016, hindered her from filing the claim in a timely manner. Appellant also cites the logistical effects of COVID-19 as further delaying her filing.

With its opening brief filed with the Office of Tax Appeals (OTA), respondent includes FTB Form 1564 for appellant. This would allow respondent to consider whether appellant was financially disabled. However, there is no indication that appellant has provided this completed form to respondent. Appellant has not provided a copy of FTB Form 1564 to OTA. Appellant has also not provided any evidence of her illness such as medical records or an affidavit from a doctor. Appellant’s unsupported assertions are not sufficient to meet her burden of proof.

The taxpayer’s failure to file a claim for refund within the statute of limitations, for any reason, bars appellant from receiving a refund. (*Appeal of Gillespie, supra.*) The language of the statute of limitations must be strictly construed, and there is no reasonable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P., supra.*) Accordingly, because appellant did not file a timely refund claim under either the four-year or one-year statute of limitations for 2017, appellant is barred from obtaining a refund.

HOLDING

Appellant did not file a timely claim for refund for the 2017 year with respect to payments made more than one year prior to October 3, 2022.

DISPOSITION

Respondent’s action in partially denying appellant’s claim for refund is sustained.

DocuSigned by:

DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

A11783ADD49442B...

Huy “Mike” Le
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D...

Teresa A. Stanley
Administrative Law Judge

Date Issued: 9/11/2023