

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. KEVIE) OTA Case No. 221011734
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OPINION

Representing the Parties:

For Appellant: C. Kevie
For Respondent: David Muradyan, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Kevie (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,667 for the 2017 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals (OTA) Administrative Law Judge Teresa A. Stanley held an oral hearing for this matter electronically on July 19, 2023. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Is appellant’s claim for refund for the 2017 taxable year barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant filed a 2017 California Resident Income Tax Return late, on October 10, 2022, reporting total tax of \$1,084, withholding credits of \$3,751, and a refund due to her of \$2,667.

2. FTB accepted appellant's tax return as filed, treated it as a claim for refund, and denied appellant's claim for refund due to the expiration of the statute of limitations.
3. This timely appeal followed.

DISCUSSION

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 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. (R&TC, § 19306(a).) R&TC section 19316(a) provides that the statute of limitations "shall be suspended during any period during which that individual taxpayer is 'financially disabled'" A "taxpayer is 'financially disabled' if that 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." (R&TC, § 19316(b)(1).) Appellant testified that she was not aware that financial disability for purposes of tolling the statute of limitations required a doctor's certification. OTA's record does not show that the exception applies to appellant. 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.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) If a taxpayer fails to file a claim for refund within the statute of limitations, the claim is barred even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Appellant failed to file a 2017 return by October 15, 2018, the extended due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year statute of limitations period is inapplicable. The second four-year statute of limitations period runs from the original due date of appellant's 2017 return, and thus expired on April 15, 2022, which is four years from the original due date of the return. (R&TC, § 19306(a).) Appellant, however, filed her return for the 2017 taxable year on October 10, 2022, which is beyond the second four-year statute of limitations period prescribed in R&TC section 19306(a).

With regard to the one-year statute of limitations, appellant's withholdings for 2017 are deemed paid on the due date for the tax return, April 15, 2018. (R&TC, § 19002(c)(1).) Thus, to

be within the one-year statute of limitations, appellant must have filed a claim for refund on or before April 15, 2019. Appellant's claim for refund, filed on October 10, 2022, is well beyond the one-year statute of limitations prescribed in R&TC section 19306(a).

Appellant does not deny that her return was filed after the expiration of the statute of limitations. Rather appellant asserts that her husband disappeared and that she was left with substantial debts. Appellant further asserts that she has finally paid most of that debt but owes money to the IRS. Appellant requests that FTB apply her overpayment to that federal tax debt. At the hearing, appellant testified that she is aware that there are some exceptions to the statute of limitations, mentioning a military exception and a financial "hardship" exception. FTB responds that overpayments must either be credited against any amount due or refunded to the taxpayer unless the refund is barred by the statute of limitations. (R&TC, §§ 19301, 19306.) In response to appellant's claim of an exception for financial "hardship," FTB clarified at the hearing that there is an exception under R&TC section 19316 for financial disability.

With respect to appellant's arguments that her husband disappeared and left her with substantial debts, those reasonable cause arguments are unavailing as there is no reasonable cause exception to the statute of limitations. Moreover, under the circumstances here, FTB may not apply an underpayment to appellant's other debts as appellant's claim to those funds is barred by the statute of limitations. Finally, appellant has not alleged that she was unable to manage 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. While OTA is sympathetic to appellant's situation, equitable circumstances do not allow a refund after the statute of limitations has expired. (*Appeal of Benemi Partners, L.P., supra.*) As such, OTA has no basis to overturn FTB's action.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 9/27/2023