

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. NALLY

) OTA Case No. 220911498
)
)
)
)

OPINION

Representing the Parties:

For Appellant: J. Nally

For Respondent: Noel Garcia-Rosenblum, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Nally (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,196 for the 2016 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. FTB received information that appellant received sufficient income during the 2016 tax year to prompt a California tax return filing requirement.
2. Appellant had not filed a tax return for that year. FTB issued a Request for Tax Return (Request) to appellant dated August 11, 2020, which directed appellant to either file a tax return for the 2016 tax year or provide evidence showing that the tax return had already been filed, or that appellant had no filing requirement for the 2016 tax year by September 16, 2020.

3. When appellant did not respond to the Request, FTB sent appellant a Notice of Proposed Assessment (NPA) proposing to assess tax of \$7,702.00,¹ a late filing penalty of \$1,309.75, plus applicable interest, based on an estimate of appellant's income.
4. On June 14, 2022, appellant filed a 2016 California tax return, reporting an overpayment of tax and claiming a refund of \$1,512. After reviewing appellant's tax return, FTB abated the late filing penalty and reduced the claimed overpayment to \$1,196 to account for a collection cost recovery fee of \$316.
5. FTB treated appellant's 2016 California tax return as a claim for refund and denied appellant's claim because the statute of limitations had expired.
6. Appellant then filed this timely appeal.

DISCUSSION

R&TC section 19306 sets forth the statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P (*Jacqueline Mairghread*).

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*); *Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*)). This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602; *Benemi, supra*.) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is

¹ The NPA indicated that appellant was given credit for withholdings of \$1,833, resulting in tax due of \$5,239 (total tax of \$7,072 minus withholdings of \$1,833).

redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223, citing *U.S. v. Locke* (1985) 471 U.S. 84, 100-101 and *U.S. v. Boyle* (1985) 469 U.S. 241, 249; *Benemi, supra.*)

Since appellant did not file a timely return, the applicable statute of limitations in this appeal is the later of four years from the last day prescribed for filing the tax return (without regard to any extension of time to file) or one year after the date of the overpayment. (R&TC, § 19306(a).) For the 2016 tax year, the four-year statute of limitations period expired on May 17, 2021 (four years from the due date of April 15, 2017, plus additional time provided under the COVID-19 State of Emergency postponement).² Appellant did not file a claim for refund until June 14, 2022. Appellant’s claim for refund for the 2016 tax year is therefore barred under the four-year statute of limitations.

The one-year statute of limitations only applies to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) The record shows withholdings for 2016 that are deemed paid on April 15, 2017. (R&TC, § 19002(c)(1).) Since appellant filed her claim for refund on June 14, 2022, which is several years after the one year from overpayment date of April 15, 2018, appellant’s claim is barred by the one-year statute of limitations.

In this appeal, appellant does not contend that she filed her California tax return within the prescribed time period set forth in R&TC section 19306. Rather, appellant’s assertions are equitable in nature. Appellant explains that during 2015, she suffered incredible personal losses and in 2016, a subsequent medical issue that made it difficult for her to function. While OTA is sympathetic to appellant’s situation, it can only grant relief where the law specifically allows. The law is clear that the language of the statute of limitations must be strictly construed, and the law does not provide for reasonable cause or an equitable basis for suspending the statute of limitations. (*Benemi, supra.*) As explained above, this is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*)

R&TC section 19316 provides that the period for filing a claim for refund may be suspended, and therefore extended, if a taxpayer is “financially disabled,” as defined in R&TC

² R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives FTB the authority to postpone certain tax-related deadlines. FTB postponed the four-year statute of limitations for claiming a refund for the 2016 tax year to May 17, 2021, due to the COVID-19 State of Emergency. (See <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>.)

section 19316(b).³ When a taxpayer alleges financial disability to suspend and thus extend the 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. (*Gillespie, supra.*) The taxpayer bears the burden of proof to show that they were financially disabled. (*Ibid.*) During this appeal, FTB provided appellant with information about financial disability, including the required physician’s affidavit form. Appellant has not argued that she was financially disabled during the relevant period and has not provided any evidence to support such a claim. OTA has no basis upon which to find that appellant was financially disabled.

For the reasons explained above, without a timely refund claim, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

The statute of limitations bars appellant’s claim for refund for the 2016 tax year.

DISPOSITION

FTB’s action denying appellant’s claim for refund for the 2016 tax year is sustained.

DocuSigned by:
Amanda Vassigh
7B17E958B7C14AC...

Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
B17AE9DCAAB045D...

Asaf Kletter
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
0CC6C6ACCC6A44D...

Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/9/2023

³ Financial disability exists if: (1) an “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/registered domestic partner or other legally authorized person who can act on the taxpayer’s behalf in financial matters. (R&TC, § 19316(b).)