

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
L. ROGERS

) OTA Case No. 220710923
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OPINION

Representing the Parties:

For Appellant: L. Rogers

For Respondent: Camille Dixon, Tax Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Rogers (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$697 for the 2017 tax year.

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

ISSUE

Whether appellant’s claim for refund was timely for purposes of the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely 2017 California income tax return.
2. On May 24, 2022, appellant filed her 2017 tax return reporting an overpayment of \$697. Respondent treated appellant’s late-filed return as a claim for refund, and denied the claim based on the expiration of the statute of limitations.
3. Appellant filed this timely appeal.

DISCUSSION

The general statute of limitations to file a claim for refund is set forth in R&TC section 19306. Here, the applicable statute of limitations expired on April 15, 2022; that is, “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)” (R&TC, § 19306(a).) 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 (*Gillespie*)). There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

However, 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).)

Here, appellant claims that she was unable to file her income tax returns for several years because of depression and mental illness. “The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by the Franchise Tax Board.” (R&TC, § 19316(a).) Those procedures and requirements specified by respondent include the use of Form FTB 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.” Appellant has not provided Form FTB 1564 nor has she provided an affidavit from a physician. “When an appellant alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician’s affidavit *must* be provided that identifies the disability period when appellant was unable to manage [appellant’s] financial affairs.” (*Gillespie, supra*, emphasis added.) After the filing of appellant’s appeal, respondent reached out to appellant with an explanation of the procedure to apply for a suspension of the statute of limitations under the claim of financial disability. Respondent also attached

Form FTB 1564 and encouraged appellant to complete the form and submit it for respondent’s review. Appellant did not respond.


OTA acknowledges appellant may have suffered from depression and mental illness during the 2017 tax year through the filing deadline in 2018. However, OTA lacks sufficient corroborating documentation to determine appellant was financially disabled under the law. By not submitting Form FTB 1564, appellant did not satisfy the procedures and requirements specified by respondent, despite being given the opportunity to do so. Therefore, appellant did not establish that financial disability tolled the statute of limitations for the filing of appellant’s claim for refund, and thus, the statute of limitations for the 2017 tax year expired before appellant filed her claim for refund.

HOLDING

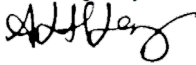
Appellant has not shown her claim for refund was timely for purposes of the statute of limitations.


DISPOSITION

Respondent’s action is sustained.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

272943E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

3CAD7A62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

Date Issued: 11/2/2023