

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
W. CARTER) OTA Case No. 230312855
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OPINION

Representing the Parties:

For Appellant: W. Carter
For Respondent: Blake Cunningham, Specialist

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Carter (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$14,150.65 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 for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California income tax return for the 2017 tax year.
2. Respondent issued a Demand for Tax Return, and when appellant did not respond, issued a Notice of Proposed Assessment. After appellant did not timely respond to the Notice, respondent’s proposed assessment went final, and respondent initiated collection action.
3. Respondent received payments on March 15, 2021, and April 19, 2021, in satisfaction of appellant’s balance due.
4. Appellant filed his return late on January 6, 2023, and reported an overpayment of tax.

5. Respondent treated the late-filed return as a claim for refund, and denied it as untimely based on the expiration of the statute of limitations.
6. This timely appeal follows.

DISCUSSION

The general statute of limitations to file a claim for refund is set forth in R&TC section 19306. Here, the four-year 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 one-year statute of limitations expired one year from the date of appellant’s payments - March 15, 2022, and April 19, 2022. (*Ibid.*) Appellant filed his claim for refund on January 6, 2023, which is after the expiration of all applicable periods allowed by the statute of limitations. 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 asserts he was unable to file his 2017 California income tax return because of “serious health reasons.” Appellant argues that his service-connected disability prevented him from timely filing his 2017 return, and thus, he is entitled to a refund of his overpayment. To support his argument, appellant provided a letter from the Department of Veteran Affairs that summarizes his Veteran Affairs benefits and indicates appellant was permanently disabled.

“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 he 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*, italics added.) After appellant filed this appeal, respondent filed its opening brief and attached a copy of Form FTB 1564, with an explanation of the procedure to apply for a suspension of the statute of limitations under the claim of financial disability. Appellant did not respond.


OTA acknowledges appellant may have suffered from a service-connected disability. However, OTA lacks sufficient corroborating documentation to determine appellant was financially disabled under the law. OTA notes that, in the Veterans Affairs letter, the effective date of when appellant became totally and permanently disabled is March 7, 2022. There is no information as to if and how appellant’s service-connected disability prevented him from managing his financial affairs prior to and following that date. Moreover, appellant did not submit Form FTB 1574 and therefore 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 his claim for refund.

HOLDING

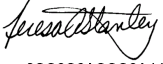
Appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

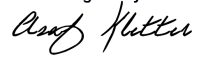
DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

Date Issued: 12/21/2023