

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. S. KAHNG (DEC'D))
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OTA Case No. 221212211

OPINION

Representing the Parties:

For Appellant: Natasha Rangel, Asst. Public Administrator

For Respondent: Paige Chang, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. S. Kahng (Dec'd) (appellant) appeals actions by the Franchise Tax Board (respondent) denying appellant's claims for refund of \$101 and \$25,095 for the 2016 and 2017 taxable years, respectively.

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

ISSUE

Whether appellant's claims for refund were filed on time.

FACTUAL FINDINGS

1. Appellant passed away on April 7, 2018, before filing 2016 and 2017 California personal income tax returns (Form 540).
2. An administrator for appellant's estate was appointed by the Probate Court in December 2021.
3. On November 8, 2022, and November 7, 2022, the administrator filed appellant's 2016 and 2017 Forms 540, respectively, claiming a refund for each of those taxable years.
4. Respondent denied the claims because they were filed late, and appellant appealed.

5. During this appeal, appellant did not respond to a request to establish whether R&TC section 19316 was applicable.

DISCUSSION

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Porreca*, 2018-OTA-095P; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Amounts withheld from wages are deemed paid on the original due date of the Form 540. (See R&TC, § 19002(c).)

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 original 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.) The time for filing a claim for refund may be extended during the period in which the taxpayer is financially disabled, as defined by R&TC section 19316(b). A taxpayer is considered financially disabled if: (1) the 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 or other legally authorized person to act on the taxpayer's behalf in financial matters. (R&TC, §19316(b)(1) & (2).)

In this appeal, appellant did not file the 2016 and 2017 Forms 540, which were due on April 15, 2017, and April 15, 2018, respectively, until November 2022, which is also the date of the refund claims. As such, it is clear that appellant's 2016 and 2017 refund claims are untimely because the claims were filed beyond the four-year filing due date (which expired on May 17, 2021 due to COVID-19) and April 15, 2022, respectively) and the one-year payment period, which expired for payments made before November 2021.

Appellant explains that the required 2016 and 2017 Forms 540 were filed as soon as the estate had funds to pay for the preparation thereof and pay any tax liabilities. However, there is no reasonable cause or equitable basis for suspending the statute of limitations.

(*U.S. v. Brockamp* (1997) 519 U.S. 347, *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P).

Further, neither ill health of a taxpayer, nor any other unfortunate circumstances can extend the

statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie (dec'd)*, 2018-OTA-052P). The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)


While California law does not permit equitable tolling of the statute of limitations for filing a refund claim, the law provides a narrow exception for individuals determined to be “financially disabled.” During this appeal, this panel asked the parties to provide further evidence to address whether appellant qualified for financial disability treatment. Appellant did not respond to this request, and respondent essentially asserted that, under the facts of this appeal, appellant did not qualify for financial disability treatment. Because the record has no evidence of financial disability, relief under R&TC section 19316 is not available.

HOLDING

Appellant’s 2016 and 2017 refund claims were not filed on time.

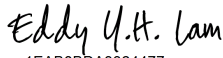
DISPOSITION

Respondent’s actions are sustained.

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Tommy Leung
Administrative Law Judge

I concur:

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Eddy Y.H. Lam
Administrative Law Judge

T. STANLEY, concurring: I agree with all aspects of the majority's Holdings and Disposition for taxable year 2016. With respect to the 2017 taxable year, I believe this is a matter of first impression where, as here, a taxpayer died prior to the due date for filing a return. The Franchise Tax Board (FTB) concludes in an additional brief that death alone does not warrant tolling of the statute of limitations pursuant to Revenue & Taxation Code (R&TC) section 19316. FTB's reasoning is that D. S. Kahng (Dec'd) (appellant) "has not provided any evidence to establish that the statute of limitations was tolled by reason of financial disability, such as a completed FTB Form 1564, Financially Disabled-Suspension of the Statute of Limitations, which requires, in part, an affidavit from a physician," and did not meet appellant's burden of proof.

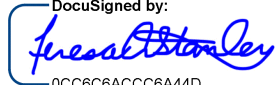
In *Appeal of Gillespie (dec'd)*, 2018-OTA-025P (*Gillespie*) the Office of Tax Appeals (OTA) held that the taxpayer had not met her burden of proof to toll the statute of limitations pursuant to R&TC section 19316, in part, because the taxpayer had not filed FTB Form 1564. While *Gillespie* also related to two taxable years, the holding that would require the taxpayer to file FTB Form 1564 with an affidavit from a physician was applied only to the taxable year prior to taxpayer's death, 2005. The taxpayer in *Gillespie* died after the due date for filing her 2006 tax return, and in that case, an administrator was promptly appointed within a few months of taxpayer's death but did not take action to file a claim for refund until much later.

Here, appellant died approximately one week prior to the filing due date for his 2017 tax return, and the current representative was not appointed until December 16, 2021. Taxpayers must establish financial disability "in accordance with those procedures and requirements specified by the [FTB]." FTB's currently established procedures require that taxpayers submit, at a minimum, an FTB Form 1564 that is signed by a physician. (R&TC, § 19316(a).) However, it was impossible for appellant to follow FTB's procedures which would require him to submit FTB Form 1564 with an affidavit signed by a physician for taxable year 2017. I am of the opinion that death constitutes the ultimate financial disability, and it would have been impossible for appellant to comply with FTB's established requirements.

The question then becomes whether appellant had a representative who would have the authority to file a return on his behalf. Here, Ms. Rangel was not appointed to represent appellant's estate until December 16, 2021, approximately four months before the four-year

statute of limitations expired on April 15, 2022.¹ (R&TC, § 19306.) Appellant's explanation is that the return preparation and possible tax payments were delayed until there were sufficient funds in the estate. Appellant failed to respond to OTA's request for additional briefing showing why there was such a long delay in appointing an estate representative and whether R&TC section 19316 should toll the statute of limitations in this appeal. Thus, OTA has no evidence showing that appellant's representative could not have timely filed a claim for refund after appellant's death.

In short, appellant has not met the burden of proof to show that the statute of limitations was tolled for taxable year 2017, and FTB's determination must be upheld.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/15/2024

¹ Moreover, appellant's 2017 California tax return lists S. Flores, Deputy Public Administrator, as appellant's DPA (Durable Power of Attorney), and Ms. Rangel's appointment is as a *successor* administrator, which implies that there was a previously appointed administrator. Thus, it appears that another representative may have had the authority to file a claim for refund on appellant's behalf prior to the expiration of the statute of limitations. (See Probate Code, § 10556 [representative has the power to pay taxes]; see also Probate Code § 10801 (representative has the power to employ experts to prepare tax returns.) Without further explanation, OTA has no basis upon which to conclude that the statute of limitations was tolled under these circumstances.