

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
N. TOMASINO) OTA Case No. 230613501
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OPINION

Representing the Parties:

For Appellant: N. Tomasino
For Respondent: Kristin K. Yeager, Program Specialist
For Office of Tax Appeals: Westley Marcelo, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Tomasino (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,702.61 for the 2015 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, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Is appellant’s claim for refund for the 2015 taxable year barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not timely file a 2015 California income tax return.
2. FTB estimated appellant’s income and issued a Notice of Proposed Assessment (NPA) to appellant, proposing additional tax, after deducting appellant’s withholdings, a late-filing penalty, and interest.

3. Appellant did not protest the NPA, and the assessment became final. FTB undertook collection actions and received various payments from appellant from June 14, 2018, to July 12, 2019.
4. FTB received appellant's 2015 return on April 10, 2023. The return reported total tax of \$1,265, tax withholding of \$1,099, and tax due of \$166. FTB accepted the return, reduced the late-filing penalty, and updated appellant's 2015 account to reflect a \$2,702.61 overpayment.¹
5. FTB sent appellant a notice on May 3, 2023, explaining that the return was treated as a claim for refund, but the claim was denied because it was filed after the statute of limitations period expired.
6. This timely appeal followed.

DISCUSSION

In an action for refund, the taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence.² (*Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs, tit. 18, § 30219(a)-(b).) R&TC section 19306 provides that 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 (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) For purposes of R&TC section 19306, amounts withheld are deemed to be paid on the original return due date. (R&TC, § 19002(c)(1).) There is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Here, appellant untimely filed a 2015 tax return on April 10, 2023, which FTB treated as a claim for refund. The first four-year statute of limitations period described in R&TC section 19306(a) is not applicable because appellant did not file a return within a valid extension period. The second four-year statute of limitations period originally expired on April 15, 2020,

¹ Appellant reported \$1,099 in withholdings on the 2015 tax return but did not also subtract from tax the additional \$3,315.49 in payments (total \$4,414.49). Appellant's overpayment was computed by subtracting \$1,711.88 (total tax plus the revised late-filing penalty, interest, and a collection cost recovery fee) from appellant's total payments (\$4,414.49 - \$1,711.88 = \$2,702.61).

² A preponderance of evidence means that a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

four-years from the original due date of appellant's 2015 return but was postponed to July 15, 2020.³ Appellant's claim was therefore filed after the second four-year statute of limitations period expired.

The alternative one-year statute of limitations period expired one year from the date of appellant's overpayment. Appellant's tax withholding payments for the 2015 taxable year were deemed paid on April 15, 2016; therefore, the corresponding look-back period expired one year later on April 15, 2017. (R&TC, § 19002(c)(1).) Appellant also made a series of payments towards the 2015 taxable year account from June 14, 2018, to July 12, 2019, as part of FTB's collection actions. The latest look-back period for those payments ended on July 15, 2020.⁴ Thus, appellant's claim for refund was outside of the one-year statute of limitations period for all payments.

Appellant explains that the tax return was not filed in a timely manner due to severe mental health challenges stemming from deaths in the family and other personal difficulties. After receiving treatment and counseling, appellant was able to address previously missed tax matters, including filing the 2015 tax return. Appellant also cites a financial need for the refund.

Although the statute of limitations for refund claims is strictly construed (*Appeal of Benemi Partners, L.P., supra*), the limitations period may be tolled while an individual is "financially disabled," as defined in R&TC section 19316. An individual taxpayer is "financially disabled" if: (1) the taxpayer is unable to manage his or her financial affairs due to 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); *Appeal of Estate of Gillespie, supra*.) Financial disability is established in accordance with the procedures and requirements specified by FTB.⁵ (R&TC, § 19316(a).) The taxpayer must provide a physician's affidavit that identifies the disability

³ Due to the COVID-19 state of emergency, FTB was authorized under R&TC section 18572 to postpone certain tax-related deadlines. Where an applicable statute of limitations to file a claim for refund expired between the period of March 12, 2020, to July 15, 2020, FTB considered a claim timely if filed on or before July 15, 2020. (See FTB Notice 2020-02<<https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>>.)

⁴ See footnote 2.

⁵ See Form FTB 1564, Financially Disabled – Suspension of the Statute of Limitations <<https://www.ftb.ca.gov/forms/misc/1564.pdf>>.

period when the taxpayer was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*)

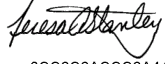
Although OTA is sympathetic to appellant's contentions, the statute of limitations to file a claim for refund cannot be waived or tolled in this instance. First, appellant's stated financial need for the refund constitutes a reasonable cause type of argument. It is well settled, however, that there is no waiver of the statutory period for reasonable cause. (*Appeal of Benemi Partners, L.P., supra.*) Secondly, appellant's mention of severe mental health challenges and subsequent treatment during the limitations period may implicate the financial disability exception to the general statute of limitations. To that point, appellant does not explicitly argue financial disability during the limitations period and did not submit the necessary documentation to substantiate such a claim (i.e., a physician's affidavit identifying appellant's disability period). Therefore, OTA cannot determine whether the statutory period may be tolled based on financial disability. Accordingly, appellant's claim for refund was untimely.

HOLDING

Appellant's claim for refund for the 2015 taxable year is barred by the statute of limitations.

DISPOSITION

FTB's action in denying appellant's claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 1/23/2024