

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230112313  
V. BURNS )  
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**OPINION**

Representing the Parties:

For Appellant: Ernest Dubnicoff, EA

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: Angie Ye, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Burns (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$16,364.91 for the 2017 tax year.

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

**ISSUE**

Whether appellant’s claim for refund of \$16,364.91 for the 2017 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not file a timely 2017 California tax return.
2. FTB issued appellant a Demand for Tax Return regarding appellant’s 2017 California tax return. Appellant did not respond.
3. On December 9, 2019, FTB sent appellant a Notice of Proposed Assessment (NPA) for the 2017 tax year.
4. The NPA explained that the proposed assessment of \$16,210.19 would become due and payable on February 7, 2020, unless appellant filed a 2017 California tax return or a

- protest. FTB did not receive a 2017 tax return or a protest within the specified time. The NPA became final.
5. FTB initiated collection action through wage garnishment on November 12, 2020.
  6. From December 30, 2020, to July 14, 2021, FTB collected \$17,302.26 through wage garnishment, which was applied to appellant's 2017 tax year balance.
  7. On June 15, 2022, FTB collected a final payment of \$242.34, which it applied to appellant's 2017 tax year balance.
  8. On October 3, 2022, FTB received appellant's 2017 California tax return and treated the tax return as a claim for refund.
  9. On October 17, 2022, FTB sent appellant a notice stating that appellant's June 15, 2022 payment of \$242.34 would be refunded; however, appellant's claim for refund for the remaining overpaid tax of \$16,364.91 was disallowed because the claim was barred by the statute of limitations.
  10. This timely appeal followed.

#### DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Cornbleth*, 2019-OTA-408P.) R&TC section 19306 provides that no credit or refund shall be allowed or made 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 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 language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*)

Here, the statute of limitations period concerning filing extensions is inapplicable because appellant did not timely file the 2017 California tax return pursuant to an extension of time to file. The second statute of limitations period expired four years from the due date for filing the 2017 tax return. The due date for the 2017 California tax return was April 15, 2018, so the

second statute of limitations period expired April 15, 2022. Lastly, the third statute of limitations period expired one year from the date of overpayment. Since appellant filed her claim for refund for the 2017 tax year on October 3, 2022, the final payment of \$242.34 collected on June 15, 2022, was properly refunded. The remaining payments were collected outside of the statute of limitations period and time-barred.

R&TC section 19316 contains an exception to the statute of limitations, suspending the limitations period specified in R&TC section 19306 during any period in which a taxpayer is “financially disabled.” A taxpayer is considered financially disabled if: (1) the 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).) When a taxpayer alleges financial disability to toll the statute of limitations 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. (*Appeal of Estate of Gillespie*, 2018-OTA-052P).

Here, appellant asserts various difficult personal circumstances caused her to be unable to timely file her claim for refund within the statute of limitations. Appellant asserts that she was financially disabled. During this appeal, FTB provided appellant with information about financial disability, including a need to submit appellant’s medical records or an affidavit identifying the disability period. However, appellant has not provided any records or affidavits for the relevant time period to support her claim of financial disability. The Office of Tax Appeals has no basis to find that appellant was financially disabled. While her personal circumstances are unfortunate, they are not legally sufficient to toll the statute of limitations in this appeal. Thus, appellant’s claim for refund is time-barred by the statute of limitations.

HOLDING

Appellant’s claim for refund of \$16,364.91 for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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*Sara A Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Teresa A Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 10/9/2023