

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

In the Matter of the Appeal of: ) OTA Case No. 21027223  
D. WALLACE, JR. (DEC'D) )  
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**OPINION**

Representing the Parties:

For Appellant: Ron Wallace, Representative

For Respondent: Nancy E. Parker, Attorney

For Office of Tax Appeals: John Yusin, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Wallace, Jr. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$20,010.73<sup>1</sup> for the 2014 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 is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Respondent received information that appellant had sufficient income in California during the 2014 tax year that required him to file a California return. Respondent's records indicate that appellant did not file a 2014 return.
2. Respondent sent appellant a Demand for Tax Return (Demand) and instructed appellant to (1) file a 2014 return; (2) provide evidence he had already filed a 2014 return; or (3) provide information showing he was not required to file a 2014 return.

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<sup>1</sup> In appellant’s brief, appellant lists the amount in dispute as \$16,047.

3. After appellant did not respond to the Demand, respondent issued him a Notice of Proposed Assessment (NPA), which estimated appellant's income based on the information reported by State Street Retiree Services, Pacific Life Insurance Company, and Southwest Escrow. The NPA included estimated income of \$192,880.50, and a proposed tax of \$15,009, plus penalties, a fee, and interest. Appellant had withholding credits of \$12,436, which reduced the proposed tax liability to \$2,573.
4. After appellant failed to protest the NPA, the 2014 proposed assessment became due and payable and respondent mailed a Notice of State Income Tax Due for the 2014 tax year to appellant. Because appellant did not pay the balance due, respondent sent appellant an Intent to Record a Notice of State Tax Lien for unpaid amounts for tax years 2012 and 2014.
5. Respondent subsequently filed a Notice of State Tax Lien in Los Angeles County and imposed a lien fee of \$16.
6. On January 9, 2018, respondent received \$16,047.15 from WFG National Title Company of California, and applied \$7,590.73 to satisfy appellant's 2014 tax account balance.<sup>2</sup>
7. On June 8, 2020, appellant filed Form 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund. On his Form 2917, appellant stated that he was being treated for serious medical conditions since 2014, and that he had attached some letters from his doctors and medical history.
8. On June 10, 2020, appellant untimely filed his 2014 return, reporting an overpayment of \$20,027.
9. Respondent treated appellant's 2014 return as a claim for refund. Respondent accepted the 2014 return as filed. Respondent applied the lien fee of \$16 to the claimed overpayment and determined that the correct overpayment amount was \$20,010.73. Respondent did not refund the 2014 overpayment of \$20,010.73 to appellant because the statute of limitations for filing a claim for refund had expired.
10. This timely appeal followed.

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<sup>2</sup> Respondent states that after it applied \$7,590.73 to appellant's 2014 tax account, it applied \$8,455.52 to appellant's 2012 tax account, and the remaining amount to appellant's 2015 tax account.

### DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306, which provides that no credit or refund may be allowed unless a refund claim is filed within the later of: (1) four years from the date the return was filed, if the return was filed within the extended due date; (2) four years from the date the return was due, 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 the one-year statute of limitations, any tax deducted and withheld during the calendar year is deemed to have been paid on the original filing deadline for that tax year. (R&TC, § 19002(c)(1), (d)(1).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Here, appellant's claim for refund was not filed within the time limitations delineated in R&TC section 19306, and therefore, the claim is barred. The 2014 return was untimely filed on June 10, 2020, therefore the first four-year statute of limitations period does not apply. The due date of the 2014 return, determined without regard to an extension of time to file, was April 15, 2015, and the claim for refund needed to be filed by April 15, 2019, to be considered timely. (R&TC, §§ 18566, 19306(a).) As such, appellant did not file the 2014 return within the second four-year statute of limitations deadline. The withholding credit of \$12,436 is deemed paid on the last day prescribed for filing the return—April 15, 2015. (R&TC, § 19002(c)(1), (d)(1).) Since appellant's claim was filed on June 8, 2020, more than one year from the last date of payment on January 9, 2018, appellant's claim for refund also falls outside of the one-year statute of limitations deadline.

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Neither the ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Ibid.*)

The only basis for suspending the statute of limitations is for an individual taxpayer to establish that he or she was "financially disabled," as defined in R&TC section 19316. An

individual taxpayer is considered financially disabled if: (1) he or she is unable to manage his or her financial affairs due to a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of at least 12 months; and (2) there is no spouse or other legally authorized person to act on the individual taxpayer's behalf in financial matters. (R&TC, § 19316(b).)

The California legislature granted authority to determine "financial disability" with respondent. "The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by [respondent]." (R&TC, § 19316(a).) Respondent issued Form 1564, Financially Disabled – Suspension of the Statute of Limitations, for this purpose.

Form 1564 requires the taxpayer to identify the following: (1) the period when he or she was financially disabled; (2) any persons who were legally authorized to act on his or her behalf in financial matters; and (3) whether the taxpayer made a request with the IRS on the same basis. Form 1564 also requires a physician's affidavit, signed under penalty of perjury, to substantiate the information provided by the taxpayer, including the following: (1) a description of the physical or mental impairment; (2) the physician's medical opinion that the impairment made the taxpayer unable to manage his or her financial affairs and that the impairment lasted or was expected to last for at least a continuous 12 months or was expected to result in death; and (3) the time period during which the taxpayer was unable to manage his or her financial affairs. (See *Appeal of Estate of Gillespie, supra.*) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

Appellant provided letters signed by several of his doctors that explain that he suffered from serious medical conditions, and a copy of his medical records in support of the doctors' opinions. However, appellant did not submit a completed and signed Form 1564 with the requisite information, and the doctors' letters were not signed under penalty of perjury. Therefore, appellant did not comply with the requirements that have been established by respondent.

With its opening brief filed with the Office of Tax Appeals (OTA), respondent includes Form 1564 and invites appellant's representative to properly fill out the form and to provide the required physician's affidavit to establish financial disability to suspend the statute of limitations. There is no indication that appellant has provided the completed form and physician's affidavit


for respondent’s consideration, and these documents have not been provided to OTA either. Although OTA sympathizes with appellant’s medical conditions, absent the completed Form 1564 and physician’s affidavit that respondent requires, OTA cannot determine whether appellant is financially disabled pursuant to R&TC section 19316. Thus, based on the record at appeal, the statute of limitations cannot be suspended due to financial disability.

HOLDING

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

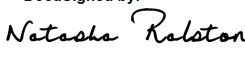
DISPOSITION

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

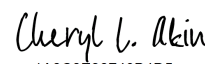
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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Natasha Ralston  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 3/20/2024