

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
J. HEGARTY) OTA Case No. 230413016
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OPINION

Representing the Parties:

For Appellant: Victoria C. Morgan, Attorney

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Westley Marcelo, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Hegarty (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$4,990.35 for the 2014 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 Panel Member. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, this matter is decided based on the written record.

ISSUE

Whether appellant’s claim for refund for the 2014 taxable year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file a 2014 California income tax return.
2. Respondent sent appellant a Demand for Tax Return notice on June 29, 2017. Appellant did not respond to the notice.

3. Respondent subsequently issued a Notice of Proposed Assessment (NPA) to appellant on August 28, 2017. The NPA proposed an assessment of \$22,015.16, including a late filing penalty and interest.
4. Appellant did not protest the NPA and the NPA went final. Afterwards, appellant made various payments from May 1, 2018, through July 27, 2022, in the sum of \$5,004.60.
5. Respondent received appellant's 2014 income tax return on February 27, 2023, which reported no tax due.
6. Respondent accepted the return as filed and returned appellant's July 27, 2022, payment of \$14.25 on March 8, 2023. Appellant's other payments totaling \$4,990.35, dated August 4, 2021, or older, were not refunded or credited by respondent. According to respondent's records, appellant had an overpayment of \$4,990.35 in his 2014 taxable year account.
7. Respondent sent appellant a notice on March 14, 2023, explaining that the return was treated as a refund claim, but the claim for \$4,990.35 was denied because it was filed after the statute of limitations expired.
8. This timely appeal followed.¹
9. During this appeal, respondent provided appellant with a copy of Form 1564, Financially Disabled – Suspension of the Statute of Limitations.

DISCUSSION

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).) In an action for refund, the taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence.² (Cal. Code Regs, tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

¹ On appeal, appellant argues that respondent placed a levy on his bank account on November 23, 2022. A copy of the levy notice is not in the record.

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.)

Here, appellant untimely filed a return for the 2014 taxable year on February 27, 2023, which was 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 the return within the extended filing period. The second four-year statute of limitations period expired on April 15, 2019, well before appellant filed a claim for refund.

The alternative one-year statute of limitations period described in R&TC section 19306(a) expired one year from the date of appellant's overpayment. As part of respondent's collections actions, appellant made a series of payments towards the 2014 taxable year account from May 1, 2018, through July 27, 2022.³ In accordance with the one-year look-back period, respondent returned appellant's payment made on July 27, 2022. The other payments made in that series, dating from August 4, 2021, or older, were properly time barred from refund or credit.

Although respondent postponed the refund claim deadlines for select taxable years due to the COVID-19 pandemic, none of the postponements are applicable to the facts in the instant appeal.⁴ Accordingly, appellant's claim is untimely, apart from the July 27, 2022, payment that was returned to appellant. Appellant makes several other contentions to seek waiver or suspension of the statutory period, which are addressed below.

Appellant describes several circumstances which can generally be characterized as reasonable cause arguments: (1) appellant makes very little income; (2) appellant was unable to work during the COVID-19 pandemic and make any tax payments; (3) appellant did not realize that he needed to file a 2014 tax return; and (4) appellant would suffer extreme hardship if he does not receive the refund. Although these contentions are compelling, the law provides that

³ Appellant claims that respondent placed a levy on his bank account on November 23, 2022, and that his tax return filed on February 27, 2023, was within the one-year statute of limitations of the levy date. However, according to the record, the last payment applied to the 2014 taxable year was on July 27, 2022, and there is no substantiation that additional funds were applied to the 2014 taxable year following the date of the levy.

⁴ See Franchise Tax Board Notice 2020-02, *Time Sensitive Acts Postponed Due to the COVID-19 State of Emergency* (March 30, 2020) <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>; Franchise Tax Board, *State Postpones Deadline For Claiming 2016 Tax Refunds to May 17, 2021*, news release (April 26, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html>; Franchise Tax Board, *2020 taxable year extension to file and pay (individual)*, <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

the statutory period for refunds cannot be waived based on reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*).⁵)

Next, appellant argues that respondent's original estimation of appellant's income, as stated in the NPA issued on August 28, 2017, was completely erroneous. And, despite the erroneous assessment, respondent "intimidated" appellant into making collections payments until July 27, 2022. As noted by respondent, a taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Benemi, supra.*) To the extent that appellant asserts respondent has violated appellant's due process rights by denying his claim for refund based on the expiration of the statute of limitations, OTA generally lacks jurisdiction to determine whether a taxpayer is entitled to a remedy for respondent's actual or alleged violation of any substantive or procedural right to due process under the law. (Cal. Code Regs., tit. 18, § 30104(e).)

Lastly, appellant states that he suffers from serious medical issues that prevent him from working full time. However, appellant concedes that his medical issues do not constitute financial disability, as defined in R&TC section 19316, to toll the statute of limitations for refund claims.

HOLDING

Appellant's claim for refund for the 2014 taxable year is barred by the statute of limitations.

DISPOSITION

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

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 4/4/2024

⁵ Although *Benemi* involves a business entity taxpayer, that precedential decision interprets R&TC section 19316, which applies to all taxpayers, including appellant.