

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

In the Matter of the Appeal of: ) OTA Case No. 230312933  
J. RAMIREZ AND )  
M. PALOMINO )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: J. Ramirez and M. Palomino

For Respondent: Phillip C. Kleam, 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. Ramirez and M. Palomino (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$4,813.66 for the 2017 taxable year.

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

**ISSUE**

Whether appellants’ claim for refund for the 2017 taxable year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellants did not timely file their 2017 California income tax return.
2. Respondent sent to J. Ramirez (JR) a Request for Tax Return notice; JR did not respond to the notice.
3. Respondent subsequently issued a Notice of Proposed Assessment (NPA) to JR. The NPA imposed a liability of \$1,700.25.

4. JR did not protest the NPA, and it went final. On May 4, 2021, respondent applied \$2,128.66 from appellant's 2020 taxable year account to JR's 2017 taxable year account.
5. Respondent received appellants' joint 2017 income tax return on February 27, 2023. The tax return reported total tax of \$397, tax withholding of \$3,398 and an overpayment of \$3,001.
6. Respondent accepted the tax return and attributed an overpayment of \$4,813.66 to appellants' 2017 account.
7. Respondent sent appellants a notice on March 13, 2023, explaining that the tax return was treated as a refund claim which was denied because it was filed after the statute of limitations period expired.
8. After appellants appealed the claim denial, respondent provided them with a copy of Form 1564, Financially Disabled – Suspension of the Statute of Limitations. There is no record of Form 1564 being completed by appellants.

#### DISCUSSION

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).) Amounts withheld are deemed paid on the original due date of the tax return. (R&TC, § 19002(c)(1).) The taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a)-(b).) 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.)

For the 2017 taxable year, the four-year statute of limitations expired on April 15, 2022. Since the amounts withheld are treated as being paid on the original due date for filing the 2017 tax return, the one-year statute of limitations for those payments expired on April 15, 2019. For the amount collected on May 4, 2021, the one-year statute of limitations expired on May 4, 2022. Therefore, appellants' 2017 tax return filed on February 27, 2023, is an untimely claim for refund.

Appellants contend that their refund claim should nonetheless be granted because JR was involved in a life-threatening job site accident in December 2020, and is still on temporary disability and cannot work. Appellants also cite the COVID-19 pandemic and personal financial hardships.

Although the statute of limitation for refund claims is strictly construed (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P), 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 personal 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*, 2018-OTA-052P.) Financial disability is established in accordance with the procedures and requirements specified by respondent.<sup>1</sup> (R&TC, § 19316(a).) The taxpayer must provide a physician’s affidavit that identifies the disability period when the taxpayer was unable to manage personal financial affairs. (*Appeal of Estate of Gillespie, supra.*) To suspend the statute of limitations, the period of financial disability must occur within the limitations period. (*Ibid.*)

Although appellants’ contentions are compelling, the statute of limitations for claims for refund cannot be waived or tolled in this instance. It is well settled that the statutory period cannot be waived based on reasonable cause, such as a taxpayer’s financial hardships. (*Appeal of Benemi Partners, L.P., supra.*) As to the financial disability exception, appellants had the opportunity to submit FTB Form 1564, along with a physician’s affidavit, for respondent’s consideration, but failed to do so. Appellants have not submitted the form, or any documentation, to substantiate the period for which JR was financially disabled. Further, no documentation has been submitted indicating that the spouse listed on the jointly-filed 2017 tax return, M. Palomino, was unable to manage financial matters on JR’s behalf during the same limitations period. Absent the necessary documentation, it cannot be determined whether appellants qualify for financial disability treatment and, thus, the period for which the limitations period is tolled. Accordingly, appellants’ claim for refund was untimely.

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<sup>1</sup> See Form FTB 1564 (Financially Disabled – Suspension of the Statute of Limitations), <https://www.ftb.ca.gov/forms/misc/1564.pdf>.

HOLDING

Appellants’ claim for refund for the 2017 taxable year is barred by the statute of limitations.

DISPOSITION

Respondent’s action in denying appellants’ claim for refund is sustained.

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*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 5/30/2024