

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212602
P. ELSBREE AND)
K. ELSBREE)
_____)

OPINION

Representing the Parties:

For Appellants: P. Elsbree
K. Elsbree

For Respondent: Joel M. Smith, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Elsbree and K. Elsbree (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,241 for the 2017 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellants did not file a timely 2017 California income tax return (Return).
2. FTB obtained information indicating that appellant P. Elsbree received income sufficient to prompt a filing requirement for the 2017 tax year. FTB issued appellant P. Elsbree a Request for Tax Return (Request) for the 2017 tax year.

3. Appellants responded to the Request by providing appellant P. Elsbree's federal Form W-2, which confirmed appellants' income was sufficient to trigger a filing requirement for the 2017 tax year.
4. FTB thereafter issued appellants a Notice of Proposed Assessment (NPA), which estimated appellants' taxable income based on the wages reflected in the Form W-2. The NPA proposed tax of \$2,480, a late filing penalty, and interest.
5. Appellants did not timely protest the NPA; therefore, the NPA became due and collectible.
6. Appellants subsequently entered into an installment agreement with FTB and from January 26, 2021, through June 28, 2021, appellants made six payments totaling \$360.
7. On July 15, 2022, and August 11, 2022, appellants made payments to FTB of \$450 and \$225, respectively, totaling \$675.
8. On January 15, 2023, appellants filed a joint 2017 Return reporting a total tax of \$1,073. After applying California income tax withholding of \$1,988, appellants reported an overpayment of \$915, which appellants requested to be refunded.
9. FTB accepted appellants' 2017 Return as filed and treated the Return as a claim for refund.
10. On January 31, 2023, FTB transferred \$676.48 to appellants' 2019 tax year account. This amount equaled appellants' 2022 payments, plus \$1.48 of interest, allowed by FTB.
11. In a letter dated February 6, 2023, FTB informed appellants that it determined appellants made an overpayment of \$1,241, but denied a refund due to the expiration of the statute of limitations.
12. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) 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. 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).) The taxpayer has the burden

of proving entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (*Appeal of Benemi Partners, L.P.*, *supra*; see *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Appeal of Cornbleth*, *supra*, citing *Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

FTB treated the Return, which was untimely filed on January 15, 2023, as a claim for refund. Since the Return was untimely, the applicable four-year statute of limitations period for appellants' 2017 refund claim runs from the original due date of the return, April 15, 2018, and expired on April 15, 2022, four years later. (See R&TC, § 18566.) Appellants' refund claim is untimely under this four-year statute of limitations because it was filed on January 15, 2023, which is after April 15, 2022.

With respect to appellants' withholding, under the one-year statute of limitations period, appellants were required to file a refund claim no later than April 15, 2019, which is one year from April 15, 2018, the date appellants' withholdings for the 2017 tax year are deemed paid. (R&TC, § 19002(c).) Appellants also made six payments from January 26, 2021, to June 28, 2021, towards appellants' 2017 tax year account. The one-year statute of limitations period for those payments expired between January 26, 2022, and June 28, 2022. Appellants untimely filed a refund claim on January 15, 2023, after the one-year statute of limitations expired for all these payments.¹ On appeal, appellants raise medical issues as a reason for appellants' untimely filing. The running of any period under R&TC section 19306 may be suspended while an individual taxpayer is "financially disabled," as defined in R&TC

¹ Appellants' 2022 payments totaling \$675 were transferred to appellants' 2019 tax year account on January 31, 2023. Therefore, FTB credited these payments and they are not at issue in this appeal.

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.*) When a taxpayer alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, an affidavit from the taxpayer’s treating physician must be provided that identifies the disability period when the taxpayer was unable to manage their financial affairs. (*Appeal of Estate of Gillespie, supra.*) Appellants have not produced a physician’s affidavit, despite being given the opportunity to do so. Therefore, appellants have not shown financial disability.

HOLDING

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

DISPOSITION

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

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 6/12/2024