

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230413075
W. KENDALL)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: W. Kendall

For Respondent: Andrea Watkins, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Kendall (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$406 for the 2015 tax year, \$3,098.57 for the 2016 tax year, and \$1,254.91 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 claims for refund for the 2015, 2016, or 2017 tax year are barred by the statute of limitations.

FACTUAL FINDINGS

2015 Tax Year

1. On January 3, 2023, appellant untimely filed a 2015 California Resident Income Tax Return (Form 540), reporting zero total tax, California income tax withholding of \$406, and an overpayment of \$406. On the Form 540, appellant requested that the overpayment be applied to his 2016 estimated taxes.

2. FTB processed the 2015 Form 540 as filed and treated it as a claim for refund of \$406 for the 2015 tax year. On January 17, 2023, FTB denied appellant's 2015 claim for refund due to the expiration of the statute of limitations.

2016 Tax Year

3. Appellant did not timely file a Form 540 for the 2016 tax year.
4. FTB later issued appellant a Notice of Proposed Assessment (NPA) for the 2016 tax year, which estimated his 2016 income and proposed additional tax, a late-filing penalty and interest. Appellant did not protest the NPA, and the liability became due and collectible.
5. FTB initiated collections, and between May 28, 2019, and June 3, 2019, it collected payments that satisfied the amount due on appellant's 2016 tax year account.
6. On January 3, 2023, appellant filed a 2016 Form 540, reporting total tax of \$557, California income tax withholding of \$241, and a tax liability of \$316.
7. FTB processed the 2016 Form 540, reduced the late-filing penalty, and treated the 2016 Form 540 as a claim for refund of \$3,098.57 for the 2016 tax year.¹
On January 17, 2023, FTB denied appellant's 2016 claim for refund due to the expiration of the statute of limitations.

2017 Tax Year

8. Appellant did not timely file a Form 540 for the 2017 tax year.
9. FTB later issued appellant an NPA for the 2017 tax year, which estimated his 2017 income and proposed additional tax, a late-filing penalty, a notice and demand (demand) penalty, and interest. Appellant did not protest the NPA, and the liability became due and collectible.
10. Pursuant to an installment agreement, between July 1, 2021, and December 25, 2022, appellant fully paid the balance due on his 2017 tax year account. Between July 1, 2021, and December 1, 2021, appellant made payments totaling \$2,100. Between January 3, 2022, and January 3, 2023, appellant made payments totaling \$3,611. On October 15, 2021, and October 19, 2022, FTB transferred \$12.18 and \$173.65 from

¹ FTB determined the 2016 overpayment of \$3,098.58 as the total of appellant's payments made pursuant to collection of \$3,908.80, subtracting the following: tax liability of \$316, late-filing penalty of \$135, collection cost recovery fee of \$317, and interest of \$42.22 ($\$3,908.80 - \$316 - \$135 - \$317 - \$42.22 = \$3,098.58$). There is a \$.01 difference with the overpayment determined by FTB, which does not affect the outcome of this appeal.

appellant's 2020 and 2021 tax year accounts, respectively and on January 11, 2023, it allowed interest of \$4.12.

11. On January 3, 2023, appellant filed a 2017 Form 540, reporting total tax of \$546, California income tax withholding of \$177, and a tax liability of \$369. Appellant self-assessed a late-payment penalty of \$92, which resulted in a total amount due of \$461 (\$369 + \$92).
12. FTB processed the 2017 Form 540, reduced the late-filing penalty and the demand penalty, and treated the 2017 Form 540 as a claim for refund of \$5,043.68 for the 2017 tax year.² FTB allowed appellant's overpayment of \$3,788.77, which it transferred to the 2018 tax year account to satisfy a balance due for that year. On January 17, 2023, FTB denied appellant's 2017 claim for refund of \$1,254.91 due to the expiration of the statute of limitations.

Timely Appeal of the 2015, 2016, and 2017 Tax Years

13. Following FTB's notices denying appellant's claims for refund for the 2015, 2016, and 2017 tax years, this timely appeal followed.
14. On appeal, FTB provides a copy of FTB Form 1564, *Physician Affidavit of Physical or Mental Impairment*, for appellant's completion, and appellant provides study, test, and assessment results concerning his ongoing illness from 2018 through 2023.

DISCUSSION

R&TC section 19306(a) 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. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*).

² For the 2017 tax year, appellant made total payments of \$5,711, FTB transferred a total of \$185.83 from the 2020 and 2021 tax years, and FTB allowed interest of \$4.12, for a sum of \$5,900.95. FTB determined the 2017 overpayment of \$5,043.68 by subtracting from the sum of \$5,900.95 the following: tax liability of \$369, late-filing penalty of \$135, demand penalty of \$136.50, filing enforcement fee of \$93, installment agreement fee of \$34, and accrued interest of \$89.77 (\$5,900.95 - \$369 - \$135 - \$136.50 - \$93 - \$34 - \$89.77 = \$5,043.68).

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Here, appellant untimely filed his 2015, 2016, and 2017 Forms 540; therefore, the four-year statute of limitations concerning returns timely filed pursuant to extension is inapplicable. Under the four-year statute of limitations concerning the original due date of the return, appellant was required to file a claim for refund for the 2015 tax year by July 15, 2020,³ for the 2016 tax year by May 17, 2021,⁴ and for the 2017 tax year by April 15, 2022.⁵ However, appellant filed his 2015, 2016, and 2017 Forms 540 on January 3, 2023, after that deadline for each respective tax year. Therefore, appellant's claims for refund were untimely under the four-year statute of limitations.

Appellant's claims for refund for the 2015, 2016, and 2017 tax years, filed on January 3, 2023, were also untimely under the one-year statute of limitations. For purposes of R&TC section 19306, income tax withholding is generally considered paid on the due date for the applicable return. (R&TC, § 19002(c)(1).) The due date of the 2015 Form 540 was April 15, 2016 (see R&TC section 18566), and therefore, appellant's income tax withholding of \$406 is deemed to have been paid on April 15, 2016. However, appellant's claim for refund for the 2015 tax year was not filed within one year of April 15, 2016, and the one-year statute of limitations bars FTB from refunding this payment. The due date of the 2016 Form 540 was April 15, 2017, and therefore, appellant's income tax withholding of \$241 is deemed to have been paid on April 15, 2017. FTB also collected payments between May 28, 2019, and

³ FTB issued FTB Notice 2020-02, which postponed the deadline to July 15, 2020, to file a claim for refund for the 2015 tax year for claims that would otherwise expire between March 12, 2020, and July 15, 2020.

⁴ In response to COVID-19, FTB postponed the deadline to file a claim for refund for the 2016 tax year from April 15, 2021, until May 17, 2021. (See <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>.)

⁵ Appellant's 2017 Form 540 was due on April 15, 2018. (See R&TC, § 18566). Therefore, the claim for refund was due by April 15, 2022.

June 3, 2019. However, appellant's claim for refund for the 2016 tax year was not filed within one year of April 15, 2017, or of June 3, 2019, and therefore, the one-year statute of limitations bars FTB from refunding the payments.

The due date of the 2017 Form 540 was April 15, 2018, and therefore, appellant's income tax withholding of \$177 is deemed to have been paid on April 15, 2018. However, appellant's claim for refund for the 2017 tax year was not filed within one year of April 15, 2018, and therefore, the one-year statute of limitations bars FTB from refunding this payment. Appellant's 2017 claim for refund was filed on January 3, 2023. Between January 3, 2022, and January 3, 2023, appellant made payments of \$3,611, FTB transferred \$173.65 from the 2021 tax year account, and FTB allowed interest of \$4.12. The sum of these amounts is \$3,788.77. FTB credited this figure to appellant's 2018 tax year account. Appellant's made other payments totaling \$2,100 outside of the one-year limitations period, between July 1, 2021, and December 1, 2021. Also, FTB transferred \$12.18 from the 2020 tax year account to the 2017 tax year on October 15, 2021, outside of the one-year limitations period. Because appellant's 2017 claim for refund was filed more than a year after appellant's 2021 payments and FTB's 2021 transfer, the one-year statute of limitations bars FTB from refunding these payments.⁶

On appeal, appellant generally asserts reasonable cause. However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Benemi, supra.*) 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 wrongly collected. (*Ibid.*) Here, appellant's untimely filing of his claims for refund for the 2015, 2016, and 2017 tax year bars any refund.

Financial Disability

R&TC section 19316(a) provides that the statute of limitations "shall be suspended during any period during which that individual taxpayer is 'financially disabled[.]'" A taxpayer is "financially disabled" when (1) he or she 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) he or she does not have a "spouse or any other person legally authorized to act on that

⁶ The January 3, 2023 notice denying appellant's 2017 claim for refund lists a total overpayment and amount disallowed of \$1,254.91, which is the 2017 overpayment of \$5,043.68, minus the sum of \$3,788.77 that FTB credited to appellant's 2018 tax year account ($\$5,043.68 - \$3,877.77 = \$1,254.91$.) It is less than \$2,112.18 ($\$2,100 + \12.18) because the sum is reduced by tax, penalties and interest. See footnote 2, above.

individual's behalf in financial matters.” (R&TC, § 19316(b)(1), (2).) FTB imposes the additional requirement that a taxpayer must submit an affidavit from a physician that identifies the period during which the taxpayer was unable to manage his or her financial affairs due to his or her impairment. (*Gillespie, supra.*)

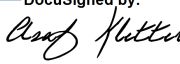
Appellant asserts that he was diagnosed with a medical condition in 2015 and his ongoing illness made managing his affairs challenging. On appeal, appellant provides study, test, and assessment results of his ongoing illness from 2018 through 2023. However, appellant has not specifically alleged that he was financially disabled. To establish financial disability, the law requires a physician's affidavit and OTA cannot waive this requirement. (*Gillespie, supra.*) Without a physician's affidavit, the period of financial disability cannot be established for purposes of tolling the statute of limitations. On appeal, FTB explains the requirements for financial disability and provides a copy of FTB Form 1564, *Physician Affidavit of Physical or Mental Impairment*, for appellant's completion. Despite opportunities to complete and return the physician's affidavit form, appellant has not provided it. Consequently, appellant has not established that he was “financially disabled” pursuant to R&TC section 19316(b).

HOLDING

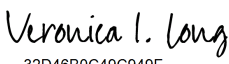
Appellant’s claims for refund for the 2015, 2016, and 2017 tax years are barred by the statute of limitations.

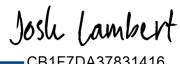
DISPOSITION

FTB’s actions denying appellant’s claims for refund for the 2015, 2016, and 2017 tax years are sustained.

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

32D46B0C49C949F...
Veronica I. Long
Administrative Law Judge

DocuSigned by:

CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

Date Issued: 6/18/2024