

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230914314
ESTATE OF D. KLINGMAN (DEC'D))
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OPINION

Representing the Parties:

For Appellant: Norman D. Klingman,
Administrator for the Estate of D. Klingman

For Respondent: Vivian Ho, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of D. Klingman (Dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$972.31 for the 2018 tax 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 administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether the statute of limitations bars appellant's claim for refund.

FACTUAL FINDINGS

1. FTB received third-party information that D. Klingman earned wage and miscellaneous income in 2018 but did not file a 2018 California individual income tax return (return) by the due date for filing the return. A third party withheld California income tax of \$4,134 on D. Klingman's behalf.

2. FTB issued D. Klingman a Notice of Proposed Assessment (NPA) for the 2018 tax year which estimated his income, credited the withholdings reported by the third party and proposed to assess additional tax. The NPA also proposed to assess penalties and interest. D. Klingman did not respond and so the liability became due and collectible.
3. On May 21, 2021, D. Klingman made three separate payments which satisfied the liability.
4. D. Klingman passed away on June 29, 2021.
5. On August 16, 2022, Norman D. Klingman was appointed administrator of D. Klingman's estate.
6. On July 15, 2023, appellant filed an untimely return for the 2018 tax year which reported an amount due.
7. FTB accepted the return as filed, but credited appellant's May 21, 2021 payments and determined an overpayment of \$972.31. FTB treated the return as a claim for refund. In a Statute of Limitations notice dated August 17, 2023, FTB denied appellant's claim for refund.
8. This timely appeal followed.

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 the overpayment. The taxpayer has the burden of proof in showing that the claim is timely and that a refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

Appellant does not dispute that its claims for refund were untimely.¹ Instead, appellant asks for an exception to the statute of limitations because of the delay in the appointment of an administrator and the subsequent time required to assess D. Klingman's financial records.

¹ The law generally requires that taxpayers file their refund claims by the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of the overpayment. (R&TC, § 19306(a).)

Appellant also requests that its refund claims be granted because D. Klingman suffered from a medical impairment that rendered him incapable of timely filing his returns.

The Office of Tax Appeals (OTA) has no recourse to refund taxes paid when the claim for refund is untimely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P). Without a legislatively enacted exception to the statute of limitations, OTA has no authority to avoid a seemingly unfair or harsh outcome. (*Ibid.*) This includes a late filing due to delays in the appointment of administrator, and in the determination of the status of an estate. (*Ibid.*)

R&TC section 19316(a) provides a narrow exception for suspending the statute of limitations during the period in which an individual taxpayer is “financially disabled,” as defined in R&TC section 19316(b), if the taxpayer can establish such financial disability in accordance with the procedures and requirements specified by FTB. Pursuant to this statutory authority, FTB requires the filing of a physician’s affidavit of physical or mental impairment on FTB Form 1564. An individual taxpayer is considered “financially disabled” if: (1) that taxpayer is unable to manage their 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 during the relevant period. (R&TC, § 19316(b).)

When an appellant alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician’s affidavit must be provided that identifies the disability period when the appellant was unable to manage their financial affairs. (*Appeal of Estate of Gillespie, supra.*) To suspend the statute of limitations, the period of financial disability must occur during the limitations period. (*Ibid.*)

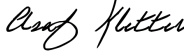
Although OTA is sympathetic to the situation presented here, appellant has not provided the requisite affidavit from D. Klingman’s physician. Therefore, appellant has not provided the documentation that is required to show whether, or for how long, D. Klingman was unable to manage his financial affairs prior to his death in 2021, and it is not possible to define a period when the statute of limitations would be suspended. Thus, OTA cannot suspend the statute of limitations.

HOLDING

The statute of limitations bars appellant's claim for refund.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Asaf Kletter
Administrative Law Judge

Date Issued: 8/13/2024