

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230914250
N. GARDNER)
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OPINION

Representing the Parties:

For Appellant: Joseph Rogowski, Representative

For Respondent: Camille Dixon, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Gardner (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,825.13 for the 2016 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 claim for refund for the 2016 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a 2016 California income tax return (return) by the due date.
2. FTB issued a Request for Return. Appellant did not respond and FTB issued a Notice of Proposed Assessment (NPA), estimating appellant’s income and proposing a tax of \$3,664 and imposing a \$916 late filing penalty, plus interest.
3. The NPA went final and appellant made payment of \$4,176.13 between October 1, 2018, and October 28, 2019.
4. FTB also intercepted a total of \$3,000 of appellant’s state lottery winnings between February 11, 2019, and April 15, 2019.

5. Appellant's total payments on file are \$7,176.13, less a cost collection fee of \$317 and an installment agreement fee of \$34.
6. Appellant filed her return late on May 1, 2023, reporting no tax due. FTB denied appellant's claim for refund of \$6,825.13 due to the expiration of the statute of limitations.
7. Appellant filed this timely appeal.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306, which provides that no credit or refund may be allowed unless a refund claim is filed within the later of: (1) four years from the date the return was filed, if the return was filed within the extended due date; (2) four years from the date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) For purposes of the one-year statute of limitations, any tax deducted and withheld during the calendar year is deemed to have been paid on the original filing deadline for that tax year. (R&TC, § 19002(c)(1), (d)(1).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

Here, appellant's claim for refund was not filed within the time limitations delineated in R&TC section 19306, and therefore, the claim is barred. The 2016 return was untimely filed on May 1, 2023; therefore, the first four-year statute of limitations period does not apply. The due date of the 2016 return, determined without regard to an extension of time to file, was April 15, 2017, and the claim for refund needed to be filed by May 17, 2021, to be considered timely.¹ (R&TC, §§ 18566, 19306(a).) As such, appellant did not file the 2016 return within the second four-year statute of limitations deadline.

The date of an overpayment is the date of payment of the first amount that exceeds the tax liability and the dates of payments of all amounts subsequently paid with respect to such tax liability. (Treas. Reg. § 301.6611-1(b).) Appellant's last payment for the 2016 tax year was

¹ FTB postponed the deadline for claiming 2016 tax refunds from April 15, 2021, to 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>.)

\$149.71 on October 28, 2019. Therefore, the one-year statute of limitations expired on October 28, 2020, and appellant's claim for refund filed on May 1, 2023, was untimely.

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Jacqueline Mairghread Patterson Trust, supra.*) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Neither the ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the taxpayer from doing so at a later date. (*Ibid.*)

The only basis for suspending the statute of limitations is for an individual taxpayer to establish that he or she was "financially disabled," as defined in R&TC section 19316. An individual taxpayer is considered financially disabled if: (1) he or she is unable to manage his or her financial affairs due to a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of at least 12 months; and (2) there is no spouse or other legally authorized person to act on the individual taxpayer's behalf in financial matters. (R&TC, § 19316(b).)

While the passing of appellant's mother in 2023 has understandably been the focus of appellant's attention, it does not provide a legal basis to suspend the statute of limitations for the 2016 tax year.

HOLDING

Appellant’s claim for refund for the 2016 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 8/5/2024