

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230613702  
D. HILT )  
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**OPINION**

Representing the Parties:

For Appellant: D. Hilt  
For Respondent: Lawrence Xiao, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Hilt (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$872.34 for the 2018 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 2018 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant did not timely file a California income tax return for the 2018 tax year.
2. FTB received information documenting that appellant had sufficient income to prompt a California income tax return filing requirement.
3. On October 16, 2020, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing tax of \$615 and a late filing penalty of \$153.75.
4. Appellant did not timely respond to the NPA, which became final on December 15, 2020.

5. FTB initiated collection action and on March 11, 2022, FTB collected \$263.34 from appellant's employer. On the same day, appellant made a payment of \$925, resulting in total collections and payments of \$1,188.34.
6. On May 26, 2023, appellant filed a California income tax return for the 2018 tax year reporting zero tax liability.
7. FTB treated appellant's 2018 tax return as a claim for refund of \$1,188.34. After adjusting for a \$316 collection cost recovery fee, FTB calculated an overpayment of \$872.34.
8. On June 12, 2023, FTB issued appellant a notice denying the claim for refund.
9. Appellant timely filed this appeal.

### DISCUSSION

R&TC section 19306(a) provides, in relevant part, 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. A taxpayer has the burden of proving entitlement to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations is explicit and must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant filed a 2018 tax return on May 26, 2023. Because appellant did not file the return by the extended due date, the four-year statute of limitations to timely file a claim for refund began to run on the original due date of the 2018 return, April 15, 2019, and expired four years later, on April 15, 2023. (See R&TC, § 19306(a).) Appellant made a payment of \$925 and FTB collected \$263.34, both on March 11, 2022, and the one-year statute of limitations to timely file a claim for refund expired on March 11, 2023. Appellant filed the claim for refund on May 26, 2023, after the expiration of the one-year statute of limitations period. Therefore,

appellant's claim for refund is barred under both the four-year and one-year statute of limitations.

Appellant contends that her son prepared her 2018 tax return but then misplaced the return without appellant's knowledge. Appellant asserts that, in 2021 or 2022, FTB informed her she would receive a refund once she paid the total amount due and filed her 2018 tax return. However, there is no reasonable cause or equitable basis for suspending the statute of limitations, and appellant's failure to file the claim for refund within the statutory period for any reason bars a refund. (See *Appeal of Benemi Partners, L.P.*, *supra.*)

Appellant also contends that she has a "critical illness" and was forced to retire for medical reasons.

R&TC section 19316 provides that the statute of limitations shall be suspended during any period in which the individual taxpayer is "financially disabled" as defined in R&TC section 19316(b). An individual taxpayer is "financially disabled" if the taxpayer 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. (R&TC, § 19316(b)(1).) However, the taxpayer is not considered to be "financially disabled" for any period during which the taxpayer's spouse or any other person is legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b)(2).) When a taxpayer alleges financial disability to suspend and thus extend the period to timely file a claim for refund, the taxpayer must provide a physician's affidavit that identifies the disability period when the taxpayer was unable to manage his or her 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 FTB provided appellant with the opportunity to provide a physician's affidavit, appellant has not provided any evidence to establish financial disability during the relevant time period. (See *Appeal of Estate of Gillespie*, *supra.*) Appellant's unsupported assertions are not sufficient to satisfy her burden of proof. (*Appeal of Moren*, 2019-OTA-176.) Therefore, appellant has not shown that the statute of limitations should be suspended due to financial disability.

HOLDING

Appellant’s claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

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

DocuSigned by:  
*Steven Kim*  
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Steven Kim  
Administrative Law Judge

We concur:

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
*Andrew Wong*  
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Andrew Wong  
Administrative Law Judge

Date Issued: 8/6/2024