

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:) OTA Case Nos. 21108758, 21119030, 22029616
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))
M. TUTMAN AND))
E. TUTMAN))

OPINION

Representing the Parties:

For Appellants: M. Tutman
 E. Tutman

For Respondent: Leoangelo C. Cristobal, Attorney
 Laura T. Wingert, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Tutman and E. Tutman (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$4,152; \$1,996; \$3,953; and \$2,890¹ for the 2006, 2007, 2010, and 2011 tax years, respectively;² and deemed denials by FTB of appellants’ claims for refund of \$1,713; \$2,018; \$545; \$1,187; and \$1,156; for the 2008, 2009, 2014, 2015, and 2016 tax years, respectively.³

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

¹ FTB denied appellants’ claim for refund of \$1,759 for tax year 2011. However, the correct amount at issue for tax year 2011 is \$2,890.

² FTB concedes that appellants timely filed their claim for refund for tax year 2016 and will refund \$1,156, plus interest, to appellants. Appellants and FTB agree that FTB already refunded \$862.88 to appellants for tax year 2017.

³ If FTB fails to act on a claim for refund within six months after the claim is filed, then the taxpayer may consider the claim disallowed and may appeal. (R&TC, § 19331; Cal. Code Regs., tit. 18, § 30203(a)(9).) FTB concedes that appellants’ claims for refund for tax years 2008, 2009, 2014, 2015, and 2016 were deemed denied because FTB did not act on their claims for refund within six months after they filed their claims.

ISSUE

Whether appellants are entitled to their claims for refund for tax years 2006 to 2011 and 2014 to 2016.

FACTUAL FINDINGS

1. Appellants timely filed their California income tax returns for tax years 2006 to 2011 and 2014 to 2016 and did not file these tax returns pursuant to an extension.
2. On May 3, 2021, appellants filed their amended California Resident Income Tax Returns for tax years 2006 to 2011 and 2014 to 2016.⁴ Appellants claimed refunds of \$1,713; \$2,018; \$545; \$1,187; and \$1,156, for the 2008, 2009, 2014, 2015, and 2016 tax years, respectively.
3. On October 4, 2021, FTB denied appellants' claims for refund for tax years 2010 and 2011.
4. On January 13, 2022, FTB denied appellants' claim for refund for tax year 2006.
5. On January 19, 2022, FTB denied appellants' claim for refund for tax year 2007.
6. FTB did not act on appellants' claims for refund for tax years 2008, 2009, 2014, 2015, and 2016 within six months after appellants filed their claims for refund. Appellants then considered their claims for refund for tax years 2008, 2009, 2014, 2015, and 2016 to be deemed denied.
7. Thereafter, appellants timely filed their appeal.⁵

⁴ It appears that appellants attempted to file two amended tax returns per year for tax years 2006 to 2011 and 2014 to 2017 in May 2021. FTB provided the California Resident Income Tax Return (Form 540) for tax years 2006 to 2009 and 2014 to 2017. Appellants provided California Explanation of Amended Return Changes (Form Schedule X) for tax years 2006 to 2011 and 2014 to 2017.

Appellants claim that on April 30, 2021, they mailed as a single correspondence, their Form Schedule X for tax years 2006 to 2011 and 2014 to 2017. FTB received two amended tax returns for at least tax years 2008 to 2011, 2014, and 2015 according to a partial record of appellants' tax returns. It appears that FTB received appellants' Form Schedule X for tax years 2016 and 2017 because FTB issued or will issue a \$1,156 and \$744 refund, plus interest, for tax years 2016 and 2017, respectively, based on appellants' Form Schedule X.

On November 9, 2022, OTA requested FTB provide appellants' account transcripts for tax years 2008, 2009, 2014, 2015, and 2016 to confirm whether appellants filed their Form Schedule X. FTB declined to respond to OTA's request.

⁵ Initially, appellants prematurely filed their appeal for tax years 2008, 2009, 2014, 2015, and 2016 on October 18, 2021, before their claims for refund were deemed denied on November 3, 2021. However, appellants withdrew their appeal for tax years 2008, 2009, 2014, 2015, and 2016 and then refiled their appeal for these tax years on November 14, 2022, after their claims for refund were deemed denied.

DISCUSSION

A taxpayer must file a claim for refund within: (1) four years from the date a return was filed (if timely filed pursuant to an extension of time to file), (2) four years from the last day to file the return (without regard to any extension of time to file), or (3) one year after the date of overpayment, whichever period expires later. (R&TC, § 19306(a).) The language of R&TC section 19306 is explicit and must be strictly construed without exception. (*Appeal of Benemi Partners L.P.*, 2020-OTA-144P.) Although fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Taxpayers have the burden of proof to establish that they timely filed their claim for refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The statute of limitations for filing a claim for refund will be suspended for any period where it is determined that a taxpayer was “financially disabled.” (R&TC, § 19316.) A taxpayer is “financially disabled” when a taxpayer has a medically determinable physical or mental impairment that is terminal or expected to last for a continuous period of at least 12 months. (*Ibid.*) The impairment must have prevented the taxpayer from managing his or her financial affairs, and no one else can have legal authorization to act on behalf of the financially disabled taxpayer. (*Ibid.*) The taxpayer must provide a physician’s affidavit identifying the period in which the taxpayer was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*)

Tax returns for calendar year taxpayers are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) FTB automatically grants a six-month extension to file a tax return if the tax return is filed within six months from the original due date. (Cal. Code Regs., tit. 18, § 18567.) Due to the COVID-19 state of emergency, FTB was authorized under R&TC section 18572 to postpone certain tax-related deadlines. Where an applicable statute of limitations to file a claim for refund expired between the period of March 12, 2020, to July 15, 2020, FTB considered a claim timely if filed on or before July 15, 2020. (See FTB Notice 2020-02, Time Sensitive Acts Postponed Due to the COVID- 19 State of Emergency (March 30, 2020) <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf>.)

The statute of limitations to file a claim for refund expired on April 15, 2011; April 15, 2012; April 15, 2013; April 15, 2014; April 15, 2015; April 15, 2016; and

April 15, 2019, for tax years 2006 to 2011 and 2014, respectively, because appellants did not file their original tax returns pursuant to an extension. Appellants filed their claims for refund for tax years 2006 to 2011 and 2014 on May 3, 2021, which was after the statute of limitations expired. In addition, appellants have not established that they filed their claims for refund for tax years 2006 to 2011 and 2014 within one year from the date of overpayment because there is no evidence in the record showing if or when appellants made their tax payments for those tax years.

For tax year 2015, the statute of limitations to file a claim for refund expired on April 15, 2020, because appellants did not file their original tax returns pursuant to an extension. If appellants' claim for refund was filed on or before July 15, 2020, it would have been timely. However, appellants filed their claim for refund on May 3, 2021, which was after July 15, 2020. In addition, appellants have not established that they filed their claims for refund for tax year 2015 within one year from the date of overpayment because there is no evidence in the record showing if or when appellants made tax payments.

For tax year 2016, FTB concedes that appellants are entitled to their claim for refund of \$1,156, plus interest.

Appellants do not dispute that their claims for refund were untimely. Instead, appellants argue that OTA should grant their claims for refund and FTB should have informed them of their overpayment. However, a taxpayer's untimely filing of a claim for refund for any reason bars a refund even if it is later shown that the tax was not owed in the first place. (*Appeal of Benemi Partners L.P.*, *supra.*) In addition, FTB does not have a duty to notify a taxpayer about an overpayment or when a claim for refund must be filed before the statute of limitations expires. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856; *Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.)

Appellants argue that they are entitled to their claims for refund because they were financially disabled. However, to show that they were financially disabled, appellants must provide a physician's affidavit identifying the period in which they were unable to manage their affairs to suspend the statute of limitations for filing a claim for refund on this basis. (*Appeal of Estate of Gillespie*, *supra.*) Appellants did not provide a physician's affidavit.

Appellants argue that FTB violated their due process rights because FTB initially failed to act, or in some cases did not act at all, upon their refund claims. However, OTA does not have

jurisdiction to determine whether appellants are entitled to a remedy for FTB's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. (Cal. Code Regs., tit. 18, § 30104(e).) Appellants have not established any of these conditions.

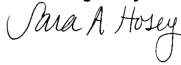
Therefore, appellants have not established that they are entitled to their claims for refund for tax years 2006 to 2011 and 2014 to 2015.

HOLDING

Appellants have not established that they are entitled to a refund for tax years 2006 to 2011 and 2014 to 2015.

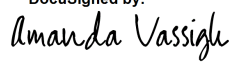
DISPOSITION

In accordance with FTB's concession on appeal, appellants' refund claim for the 2016 tax year is granted. Otherwise, FTB's actions are sustained for tax years 2006 to 2011 and 2014 to 2015.

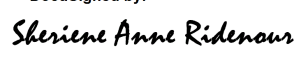
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Sara A. Hosey
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 8/14/2024