



2. FTB received no response and issued each appellant a Notice of Proposed Assessment (NPA). In each NPA, FTB estimated the respective appellant's income and proposed to assess additional tax, a late filing penalty, and interest. Appellants did not protest the NPAs, and so the NPAs went final and became collectible.
3. FTB issued each appellant collection notices. When FTB did not receive any payment, it commenced collection actions against each appellant and issued earnings withholding orders for taxes (EWOTs) for each appellant.
4. On October 17, 2021, FTB received a payment of \$4,164.76 and released the EWOT against appellant J. Zur.
5. On June 4, 2022, FTB received a payment of \$19,725, and on June 15, 2022, it received a payment of \$58.23, which satisfied the balance due on O. Zur's account. FTB released the EWOT against appellant O. Zur.
6. On June 15, 2023, FTB received appellants' joint return, on which appellants reported a total tax liability of \$14,765, withholdings of \$5,986, and a self-assessed underpayment of estimated tax penalty (estimated tax penalty) of \$222.
7. FTB processed the return and revised the late filing penalty to \$2,194.75 and the estimated tax penalty to \$227, plus interest. FTB assessed a collection cost recovery fee of \$316.
8. FTB treated the return as a claim for refund. FTB credited \$58.33, which was appellants' June 15, 2022 payment plus allowed interest, to appellants' 2017 tax year account.
9. FTB issued appellants a Statute of Limitations notice, which stated that FTB could not refund appellant's overpayment of \$10,886.59 because the statute of limitations expired.
10. This timely appeal followed.
11. On appeal, appellants provide a letter that explains appellants' work history, difficult personal circumstances, and appellant O. Zur's health impairment, and provide physicians' affidavits that corroborate that appellant O. Zur had a medical impairment between 2015 and 2021.

## DISCUSSION

It is uncontested that appellants' claim for refund was untimely under the statute of limitations.<sup>1</sup> 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. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) While fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

On appeal, appellants raise difficult personal circumstances, as well as business complications brought about by the COVID-19 pandemic, as reasons for appellants' untimely filing of their claim for refund. These arguments are reasonable-cause type arguments, but as stated above, there is no reasonable cause basis for suspending the statute of limitations. (*Benemi, supra.*) Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellants also assert that appellant O. Zur was medically impaired. R&TC section 19316(a) provides that the statute of limitations may be suspended while an individual taxpayer is "financially disabled." An individual taxpayer is "financially disabled" if: (1) 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; and (2) the taxpayer does not have a spouse or any other person legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b).) FTB imposes the additional requirement that the 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. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellants provided physicians' affidavits attesting to appellant O. Zur's medical impairment from 2015 to 2021, which supports a claim for financial disability for appellant O. Zur. However, appellant J. Zur was appellant O. Zur's spouse and joint filer, and was

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<sup>1</sup> 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 overpayment. (R&TC, § 19306(a).)

authorized to file appellants’ return, which was their claim for refund. (R&TC, § 19136(b)(2); see *Appeal of Head and Feliciano*, 2020-OTA-127P [appellants failed to establish reasonable cause where one spouse was incapacitated because they provided no evidence that the other spouse was unable to timely file the return].) While the Office of Tax Appeals is sympathetic to the rigorous nature of appellant J. Zur’s occupation, appellants have not shown that appellant J. Zur was financially disabled and unable to file a claim for refund within the statute of limitations period. Consequently, appellants have failed to establish that the statute of limitations should be suspended due to financial disability.

HOLDING

The statute of limitations bars appellants’ claim for refund for the 2018 tax year.

DISPOSITION

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

DocuSigned by:  
*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

We concur:

Signed by:  
*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

DocuSigned by:  
*Steven Kim*  
5DD7EF644397430...  
Steven Kim  
Administrative Law Judge

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