

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
C. TAT ) OTA Case No. 230312908  
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**OPINION**

Representing the Parties:

For Appellant: C. Tat

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Louis Ambrose, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Tat (appellant) appeals an action by respondent Franchise Tax Board (FTB) partially denying appellant’s claim for refund for the 2016 tax year.<sup>1</sup>

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 any additional refund.

**FACTUAL FINDINGS**

1. FTB received a withholding at source payment of \$1,512 on April 15, 2017.
2. Because appellant did not file a return for 2016, FTB issued a Demand for Tax Return notice dated August 11, 2020. The notice stated that FTB received information that

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<sup>1</sup> Appellant’s refund claim stated a refund amount of \$1,512. However, based on an overpayment reflected on the account, FTB treated the claim for refund as a claim for refund of \$2,829.20 and issued a refund denial stating that it was only refunding a portion of the overpayment. Appellant also appealed FTB’s denial of her claim for refund for the 2015 tax year. However, appellant untimely filed her appeal of the 2015 tax year more than 90 days after FTB mailed the denial notice. Therefore, the Office of Tax Appeals has no jurisdiction to hear and decide FTB’s denial of the refund claim for the 2015 tax year. (See Cal. Code Regs., tit. 18, §§ 30103(a)(3) & 30203(a)(2).)

appellant made mortgage payments during 2016, which indicated she had a California tax return filing requirement and requested that appellant respond by September 16, 2020.

The notice provided appellant with instructions for filing a 2016 return, submitting a copy of the return if already filed, or determining whether appellant was required to file a California return. The notice also stated that FTB would impose a demand penalty and a late filing penalty (hereinafter, penalties), a filing enforcement cost recovery fee (fee), and applicable interest if appellant failed to provide a response by the due date.

3. Appellant did not respond to the notice.
4. FTB issued a Notice of Proposed Assessment (NPA) dated October 22, 2020, which proposed tax, penalties, a fee, and interest in the total amount of \$1,242.29.
5. Appellant did not protest the NPA, and it became final.
6. FTB issued a Final Notice Before Levy and Lien dated April 21, 2021, which stated that it was a final demand for payment of a balance due of \$1,264.23.
7. Appellant contacted FTB by phone on May 13, 2022, to inquire about the 2016 tax liability. FTB stated to appellant that she needed to file a 2016 tax return, and she agreed to make installment payments of \$40 per month.
8. Appellant did not submit a return or installment payments, so FTB issued an Electronic Order to Withhold Personal Income Tax dated September 21, 2022, to appellant's bank. Through that action, FTB received a payment of \$1,630.98 on October 13, 2022, and wrote off the remaining tax year balance of \$2.22.
9. Appellant subsequently filed a 2016 California Nonresident or Part-Year Resident Income Tax Return on November 15, 2022. The return reported zero total liability, a withholding credit, and a refund due of \$1,512.
10. FTB processed the return and credited the prior payment of \$1,630.98, abated the penalties and the fee, and treated the return as a claim for refund. FTB allowed a refund of \$1,633.20 and denied a refund of the remaining \$1,196 balance as barred by the statute of limitations.
11. Appellant then filed this timely appeal.

#### DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (See *ibid.*) Because appellant did not file a timely return, the applicable statute of limitations in this appeal is the later of four years from the last day prescribed for filing the tax return (without regard to any extension of time to file) or one year after the date of the overpayment. (See R&TC, § 19306(a).)

Because appellant failed to file a timely return, the four-year statute of limitations for the 2016 tax year expired on April 15, 2021, four years from the tax return due date of April 15, 2017. Due to COVID-19, FTB extended the expiration of the statute of limitations for refund claims for the 2016 tax year 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>.) However, as appellant's refund claim was not filed until 2022, it was still not timely under this four-year statute of limitations period.

The one-year statute of limitations only applies to claims for refund made within one year of the date payment is made. (R&TC, § 19306(a).) Appellant made one payment of \$1,630.98 on October 13, 2022, within the one-year period, and FTB refunded that amount to appellant. However, appellant's withholding payment of \$1,512 for the 2016 tax year is deemed by statute to occur on the return filing due date of April 15, 2017. (R&TC, § 19002(c)(1).) As appellant

did not file her refund claim until 2022, the statute of limitations bars a refund of the withholding payment.

Appellant states that she was unaware of her obligation to file a 2016 California tax return, that her rental property did not generate income, and that she believed tax withheld by the property management company would be refunded to her. The fact that a taxpayer is unaware of the law does not excuse the requirement of timely filing a claim for refund. (*Appeal of F.D. Shagets* (82-SBE-170) 1982 WL 11847.) While the Office of Tax Appeals is sympathetic to the difficulties appellant describes, neither “ill health ... nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund.” (*Appeal of Estate of Gillespie (dec’d)*, 2018-OTA-052P.)

Appellant also states that she was an unemployed stay-at-home parent with a young child and her husband became disabled so that she had no income during the relevant period. Appellant states that she was unaware of the four-year statute of limitations for refund claims. Appellant states that she contracted COVID-19 in 2020 and now has Long COVID-19 which worsened her existing health issues and that she is unable to work. In view of the circumstances described by appellant, FTB provided appellant with an opportunity to provide evidence that she was “financially disabled” so as to toll the statute of limitations. A taxpayer is financially disabled if the individual “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, a taxpayer is not considered to be financially disabled for any period during which a spouse or other legally authorized person is able to act on the taxpayer’s behalf in financial matters. (R&TC, § 19316(b)(2).) A taxpayer has the burden of establishing financial disability by a preponderance of the evidence. (*Appeal of Estate of Gillespie (dec’d)*, *supra.*;

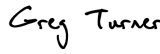
Cal. Code Regs., tit. 18, § 30219(a.) Here, appellant has not provided any evidence that she was financially disabled during the period in question and, therefore, has not met her burden of proof.

HOLDING


The statute of limitations bars any additional refund.

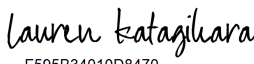
DISPOSITION

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

Signed by:  
  
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Greg Turner  
Administrative Law Judge

We concur:

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Andrew Wong  
Administrative Law Judge

Signed by:  
  
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Lauren Katagihara  
Administrative Law Judge

Date Issued: 11/6/2024