

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. SWITZER) OTA Case No. 230814098
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OPINION

Representing the Parties:

For Appellant: C. Switzer

For Respondent: Lawrence Xiao, Attorney

For Office of Tax Appeals: Kyle Hall, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Switzer (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$939 for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file her 2017 tax return.
2. FTB received information that appellant received income in an amount that may have required her to file a return for 2017.
3. FTB sent appellant a Demand for Tax Return Notice (Demand) requiring her to either file a 2017 tax return, provide evidence that she already filed a return, or explain why she did not have a filing requirement. Appellant did not respond to the Demand.
4. FTB issued appellant a Notice of Proposed Assessment (NPA) on December 9, 2019, which estimated her taxable income and proposed an assessment of tax, a notice and demand penalty, a late-filing penalty, a filing enforcement fee, and applicable interest.

5. Due to appellant's nonresponse, the NPA became final.
6. FTB issued a withholding order to appellant's employer.
7. On April 15, 2020, \$100 was transferred from appellant's 2020 tax year account and applied to appellant's 2017 tax year. Between January 6, 2021, and December 5, 2022, FTB garnished appellant's wages around every two weeks until payments were made totaling \$1,742.36 and the balance was satisfied. Of the \$1,742.36 total payments collected from appellant, \$589.71 were collected on or after April 12, 2022.
8. On April 12, 2023, appellant filed her 2017 California Resident Income Tax return (Form 540) reporting zero total tax.
9. FTB treated appellant's 2017 return as a claim for refund, which it denied in the amount of \$939¹ because the claim was barred by the statute of limitations. However, FTB transferred \$589.71 as a credit to appellant's 2018 tax year account for payments made within one year of the filing of appellant's claim for refund.
10. This timely appeal followed.

DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) R&TC section 19306(a) provides that no credit or refund shall be allowed or made 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 due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of the overpayment. Every claim for refund must be in writing, signed by the taxpayer or taxpayer's authorized representative, and state the specific grounds on which the claim is based. (R&TC, § 19322(a).)

Appellant untimely filed her 2017 return (claim for refund) on April 12, 2023. Therefore, the first four-year statute of limitations pursuant to R&TC section 19306(a) does not apply. Appellant's claim is barred under the second four-year statute of limitations because the claim must have been filed by April 15, 2022, which is four years after the due date for filing the return of April 15, 2018, and appellant did not file the return until April 12, 2023. (See R&TC, §§ 19306(a), 18566.)

¹ The \$939 is comprised of payments of \$1,742.36 less a collection cost fee of \$316 and the \$589.71 transferred to appellant's 2018 tax year, plus a transfer credit of \$100 from appellant's 2020 tax year and an interest allowance of \$2.35. It appears that FTB imposed this collection cost fee because of the involuntary collection action.

As to the one-year statute of limitations, FTB applied payments made within a year of the filing of the claim for refund totaling \$589.71 to appellant's 2018 tax year account. The remaining payments were made more than one year from the date of appellant's claim for refund (i.e., before April 12, 2022). Therefore, appellant's claim for refund as to those payments is barred under the one-year statute of limitations pursuant to R&TC section 19306(a).


Appellant argues that she was physically unable to file her 2017 return during the required time period because she suffered from "long haul COVID-19." Generally, neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (See *Appeal of Estate of Gillespie, supra.*) However, the time for filing a claim for refund may be suspended if a taxpayer is "financially disabled." (R&TC, § 19316(a).) An individual taxpayer is "financially disabled" if he or she 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).) When an individual taxpayer alleges financial disability to suspend and extend the statute of limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when the taxpayer was unable to manage his or her financial affairs. (See *Appeal of Estate of Gillespie, supra.*) Appellant did not provide a physician's affidavit to show she was financially disabled, even though FTB requested that she do so. Therefore, appellant has not shown that the statute of limitations should be suspended due to financial disability.

HOLDING

Appellant's claim for refund is barred by the statute of limitations.


DISPOSITION

FTB's action is sustained.


Signed by:

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Josh Lambert
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 11/15/2024