

In the Matter of the Appeal of:) OTA Case No. 230513294
S. BHULLAR AND)
A. BHULLAR)
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¹ Payments from 2015 through 2018 totaling \$6,392.27 + one April 15, 2023 payment of \$230 – collection cost recovery fee of \$287 = \$6,335.27.

2. Prior to that filing date, respondent sent S. Bhullar a Demand for Tax Return (Demand) and a Notice of Proposed Assessment (NPA), imposing additional tax, penalties, fees, and interest. Respondent did not receive a response to the Demand or NPA.
3. Respondent's ledger indicates that appellants made payments towards their 2015 account beginning in 2015: one payment in 2015, one payment in 2017, and six payments in 2018. These payments totaled \$6,392.27. Respondent's ledger also indicated that on April 15, 2023, appellants remitted two payments of \$230, each. On May 1, 2023, appellants also remitted a payment of \$150.
4. On appeal, respondent states that one of the April 15, 2023 payments of \$230 was refunded to appellants. As to the other April 15, 2023 payment of \$230 and the May 1, 2023 payment of \$150, respondent states that these payments will be released to appellants once this appeal is final.

DISCUSSION

The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Amounts withheld from wages are deemed paid on the original due date of the Form 540. (See R&TC, § 19002(c).) 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 original 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 overpayment. (R&TC, § 19306.)

However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Further, neither the ill health of a taxpayer, nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie (dec'd)*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra*; *Appeal of Estate of Gillespie (dec'd), supra*.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

In this appeal, appellants' 2015 tax return, which was their refund claim, was filed on April 3, 2023. Therefore, the two four-year statutes of limitations are inapplicable because they expired in 2020.

Under the one-year statute of limitations, overpayments made within one year of the claim for refund may be refunded. Here, appellants filed their return, which was their claim for refund, on April 3, 2023. Appellants made no payments within one year prior to April 3, 2023.

However, regarding the three payments remitted after appellants filed their claim for refund, respondent has conceded on appeal that appellants will be refunded the \$150 that was remitted on May 1, 2023, and one of the \$230 payments that was remitted on April 15, 2023. As to the other \$230 payment, appellants already received a refund thereof according to respondent's claim denial letter.

The time period for filing a claim for refund may be suspended if a taxpayer is "financially disabled," as defined by R&TC section 19316. A taxpayer is "financially disabled" if he or she is unable to manage his or her financial affairs due to 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)-(2).) However, a taxpayer is not considered "financially disabled" for any period which that taxpayer's spouse or any other person is legally authorized to act on that taxpayer's behalf. (R&TC, § 19316(b)(2).)

Appellants submitted FTB Form 1564, Financially Disabled – Suspension of the Statute of Limitations, completed by S. Bhullar and his doctor. On the Form, S. Bhullar indicated that A. Bhullar was authorized to act on his behalf from June 2014 to October 2015 and his doctor certified that S. Bhullar was impaired during the same time period. Because S. Bhullar indicated that someone could act on his behalf during his impairment period, S. Bhullar was not financially disabled. Even if A. Bhullar could not have acted on S. Bhullar's behalf, the period of impairment would not have sufficiently tolled the four year and one year statute of limitations to deem appellants' claim for refund as timely. Accordingly, appellants have not established that they were financially disabled.

HOLDING

Appellants filed a timely claim for refund under the one-year statute of limitations for the amount of \$380.

DISPOSITION

As conceded on appeal, respondent will allow a refund of \$380 (\$150 + \$230) to appellants. Respondent's action is otherwise sustained.

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Tommy Leung
Administrative Law Judge

We concur:

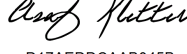
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Asaf Kletter
Administrative Law Judge

Date Issued: 12/9/2024