

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**S. ELDER** ) OTA Case No. 230513174  
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**OPINION**

Representing the Parties:

For Appellant: S. Elder  
For Respondent: Alisa L. Pinarbasi, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Elder (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$7,447.43<sup>1</sup> for the 2000 tax year.

Office of Tax Appeals (OTA) Panel Members Cheryl L. Akin, Andrew Wong, and Sheriene Anne Ridenour held a Virtual oral hearing for this matter on September 18, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

**ISSUE**

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

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<sup>1</sup> Appellant did not indicate an amount of claimed overpayment when she filed her 2000 tax return; therefore, FTB treated appellant’s tax return as a claim for refund “for the total reported overpayment on [appellant’s] account.” According to FTB’s claim denial letter, appellant’s claim for refund is for \$8,745.25, of which FTB refunded \$1,297.82 to appellant and denied the amount of \$7,447.43. However, it appears to OTA, as discussed below, that payments totaling \$9,686.90 were applied towards appellant’s 2000 tax year account, of which FTB refunded \$1,297.82 to appellant, leaving \$8,389.08 in dispute. While it is unclear to OTA what caused the difference of \$941.65 (\$8,389.08 - \$7,447.43), OTA notes that the difference does not impact the analysis in this matter.

FACTUAL FINDINGS

1. Appellant did not file a timely California return for the 2000 tax year.
2. FTB received information indicating that for the 2000 tax year, appellant received sufficient California source income to prompt a California filing requirement.<sup>2</sup>
3. FTB sent appellant a Request for Tax Return (Request), requesting that appellant reply no later than March 26, 2003, by either filing her 2000 California tax return, or by providing information to determine whether she had a California filing requirement.
4. When appellant failed to respond to the Request, FTB issued appellant a Notice of Proposed Assessment (NPA) dated February 17, 2004, setting forth estimated California taxable income. The NPA proposed additional tax of \$4,197, a late filing penalty of \$1,049.25, and applicable interest.
5. The NPA indicated it would become due and payable on March 26, 2003, unless FTB received a tax return or information demonstrating that appellant did not have a filing requirement for the 2000 tax year. On June 30, 2003, FTB sent appellant a Deferral Letter granting appellant's request for additional time to file her tax return. When appellant failed to file her return, FTB imposed \$114 in collection cost recovery fees and issued appellant an Expired Deferral Notice dated June 22, 2015.
6. FTB sent appellant a Balance Due Notice dated August 18, 2015, notifying appellant of her outstanding liability. When appellant failed to pay the balance due, FTB pursued involuntary collection action. As part of the collection activity, FTB issued an Order to Withhold (OTW) to appellant's employer, requiring it to withhold a portion of appellant's income to satisfy her outstanding liability.
7. The following 36 payments totaling \$9,686.90 were applied towards appellant's 2000 tax year account: (1) \$9 on April 11, 2008; (2) \$137 on February 6, 2012; (3) \$1,009 on February 7, 2013; (4) \$256 on February 5, 2014; (5) \$209 on January 13, 2015; (6) \$273 on February 10, 2016; (7) \$243.05 on December 1, 2017; (8) \$140 on February 3, 2020; (9) \$5,896.96 on September 14, 2020; (10) \$26.94 on September 30, 2020; (11) \$25.43 on October 13, 2020; (12) \$24.77 on October 15, 2020; (13) \$20.58 on November 10, 2020; (14) \$20 on November 15, 2020; (15) \$29.58 on December 7, 2020; (16) \$24.67 on December 15, 2020; (17) \$19.27 on January 8, 2021; (18) \$16.30 on January 15, 2021; (19) \$155 on March 22, 2021; (20) \$0.91 on

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<sup>2</sup> FTB received information from Escrow Transfers, Inc., C. Sanchez, and Delaware Charter Guarantee and Trust Co.

- April 15, 2021; (21) \$151 on March 14, 2022; (22) \$166.44 on October 14, 2022; (23) \$313 on February 15, 2023, and (24) thirteen separate payments of \$40 on October 15, 2022, November 7, 2022, November 15, 2022, December 5, 2022, December 27, 2022, January 3, 2023, January 15, 2023, January 30, 2023, February 13, 2023, February 27, 2023, March 13, 2023, March 27, 2023, and April 4, 2023.
8. When appellant's outstanding liability was satisfied, FTB withdrew the OTW on October 12, 2022.
  9. On March 13, 2023, appellant untimely filed her 2000 tax return, reporting \$0 in total tax. Appellant did not claim an overpayment on her return; however, FTB treated appellant's tax return as a claim for refund for the total reported overpayment on appellant's 2000 tax year account.
  10. FTB determined that due to the applicable statute of limitations for a timely claim for refund, FTB could only refund appellant \$1,297.82.
  11. This timely appeal followed.
  12. During the hearing, appellant was sworn in as a witness. Appellant testified that she was originally under the impression that the tax liability was her husband's, that she is a single parent taking care of her severely handicapped daughter, and, upon realizing she was responsible for the tax liability, she nevertheless did not know she needed to file a 2000 tax return.

### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) provides that 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 due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219(a)-(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent an exception, a taxpayer's untimely filing of a claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is generally no reasonable cause or equitable basis for suspending the statute of limitations.

(*Ibid.*) The statute of limitations bars an untimely claim for refund even when it is shown that the tax was not owed in the first instance. (See *U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) A statute of limitations promotes fairness and practicality in the administration of an income tax policy. (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.)

Appellant's 2000 tax return, which was untimely filed on March 13, 2023, is treated as appellant's claim for refund. The applicable four-year statute of limitations period for appellant's 2000 refund claim expired on April 15, 2005, which is four years from the original due date of the return, April 15, 2001. (R&TC, §§ 18566, 19306(a).) A series of payments from April 11, 2008, to April 4, 2023, were applied towards appellant's 2000 tax year account. The one-year statute of limitations for these payments expired between April 11, 2009, and April 4, 2024. Appellant filed a refund claim on March 13, 2023, after the one-year statute of limitations expired for the 20 payments totaling \$8,536.46 made between April 11, 2008, and March 12, 2022. As for the 16 payments made between March 14, 2022, and April 4, 2023, totaling \$1,150.44, appellant's claim for refund is timely under the one-year statute of limitations period. FTB issued appellant a refund of \$1,297.82<sup>3</sup> on April 6, 2023, and denied the claim for refund as it pertained to the remaining overpayment due to being barred by the statute of limitations.

Appellant does not dispute that the March 13, 2023 claim for refund was filed outside the statute of limitations with respect to the remaining overpayment. Instead, appellant contends that her claim for refund should not be denied for various reasons, including: (1) appellant did not work for over 10 years while taking care of her disabled daughter; (2) appellant believed the tax liability was her husband's liability;<sup>4</sup> (3) appellant is experiencing financial hardship; (4) appellant had difficulty hiring a tax preparer "to go back to year 2000 and file"; and (5) FTB unfairly continued to garnish appellant's wages even though appellant's liability "was paid in full and then some."

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statute of limitations, such as due to

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<sup>3</sup> The additional amount of \$147.38 (\$1,297.82 - \$1,150.44) refunded to appellant is in appellant's favor; therefore, OTA will not address it further.

<sup>4</sup> OTA notes that appellant does not request innocent spouse relief and, even if she did, appellant divorced in 2000 and, therefore, did not file a joint return for the 2000 tax year, which is a threshold condition for innocent spouse relief. (See R&TC, § 18533; IRS Revenue Procedure 2013-34.)

financial hardship. (See *Appeal of Benemi Partners, L.P., supra.*) However, the running of any period under R&TC section 19306 may be suspended while an individual taxpayer is “financially disabled,” as defined in R&TC section 19316. An individual taxpayer is “financially disabled” if, among other requirements, the taxpayer is unable to manage their 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); *Appeal of Estate of Gillespie, supra.*) While appellant indicated she is the caretaker for her disabled daughter, appellant does not assert, and the record does not reflect, that appellant was financially disabled during the applicable statute of limitations period.

Regarding appellant’s contention that FTB unfairly garnished her wages even though appellant’s liability “was paid in full and then some,” it appears to OTA that appellant is arguing that FTB should have ceased garnishing her wages since she had zero tax liability. R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable, if the individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).) R&TC section 19087(a) provides that if any taxpayer fails to file a return, FTB, at any time, may make an estimate of the net income from any available information and may propose to assess the amount of tax, interest, and penalties due.

FTB notified appellant in the Request, the NPA, the Deferral Letter, the Expired Deferral Notice, and the Balance Due Notice that FTB had information indicating appellant had a 2000 California filing requirement and, when appellant did not file her return, that FTB estimated appellant’s tax liability based on the information FTB received. Appellant’s liability increased due to penalties, fees, and accrued interest. FTB pursued involuntary collection action to collect appellant’s estimated tax liability, penalties, and fees, before appellant filed her return. It was not until appellant filed her 2000 tax return on March 13, 2023, reporting \$0 in total tax, which FTB treated as appellant’s claim for refund, that FTB had information as to appellant’s actual, as opposed to estimated, tax liability, and refunded amounts not barred by the statute of limitations.

Absent a legislatively enacted exception to the statute of limitations, OTA does not have the authority to suspend the statute of limitations to achieve a more equitable result for taxpayers or to avoid a seemingly harsh outcome. (*Appeal of Estate of Gillespie, supra.*) Thus, OTA is unable to provide the relief appellant seeks.

HOLDING

Appellant's claim for refund, as it pertains to the remaining overpayment, is barred by the statute of limitations.

DISPOSITION

FTB's action is sustained

DocuSigned by:

*Sheriene Anne Ridenour*

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Sheriene Anne Ridenour  
Administrative Law Judge

We concur:

DocuSigned by:

*Cheryl L. Akin*

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Cheryl L. Akin  
Administrative Law Judge

DocuSigned by:

*Andrew Wong*

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Andrew Wong  
Administrative Law Judge

Date Issued: 12/3/2024