

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
K. LENOVER) OTA Case No. 240215311
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OPINION

Representing the Parties:

For Appellant: K. Lenover
For Respondent: Raihane Dalvi, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Lenover (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,430.54 for the 2018 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 a 2018 California income tax return.
2. FTB obtained information from the Contractor’s State License Board that appellant had an occupational license. FTB issued appellant a Demand for Tax Return (Demand) dated August 18, 2020, which required appellant to respond by September 23, 2020. Appellant did not respond to the Demand.
3. On October 21, 2020, FTB issued a Notice of Proposed Assessment (NPA) for an amount of \$6,114.05, consisting of proposed tax, penalties, a filing enforcement fee, and interest. The NPA indicated that this amount would become due and payable on December 21, 2020, unless FTB either received appellant’s tax return or received his

- protest of the proposed assessment. Appellant did not timely respond to the NPA, and the proposed liability became final.
4. FTB initiated collection action. Between April 21, 2021, and November 3, 2022, FTB received all payments due from appellant.
 5. On December 1, 2023, appellant filed his 2018 California Resident Income Tax Return, reporting zero total tax. FTB accepted the return as filed, calculated an overpayment of \$6,430.54 on appellant's 2018 tax year account, and treated the return as a claim for refund of that amount.
 6. In a notice dated December 18, 2023, FTB denied the claim for refund on the grounds that it was untimely under the statute of limitations.
 7. Appellant filed this timely appeal to OTA.

DISCUSSION

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 overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the refund claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) 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. (*Ibid.*; see *U.S. v. Dalm* (1990) 494 U.S. 596, 602.)

Here, the first four-year statute of limitations period is not applicable because appellant did not timely file a 2018 return subject to a valid extension. The second four-year statute of limitations period expired on April 15, 2023, because appellant's 2018 return was originally due on April 15, 2019. (R&TC, § 18566.) The one-year statute of limitations expired on November 3, 2022, one-year after the date of FTB's last collected payment.

Appellant contends that due to the circumstances of how the overpayment occurred, it is inherently unreasonable for FTB to retain the funds. Appellant describes how he experienced significant financial challenges due to a downturn in his small business, and states that he also suffered an accident that resulted in a concussion and required several weeks for recovery. Appellant indicates that because of these challenges, and because he knew he would not have a tax liability for the 2018 tax year, he focused on other matters instead of preparing and filing his tax return. In addition, appellant argues that because the overpayment was the result of

FTB levying his bank account, allowing FTB to retain those funds would “give [FTB] an unfair enrichment.”

Courts have long held there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) The untimely filing of a claim bars relief regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected and despite the sometimes arbitrary and harsh nature of such fixed deadlines. (*U.S. v. Dalm, supra*, 494 U.S. at 602; *Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222.) Without a legislatively enacted exception to the statute of limitations, OTA has no authority to avoid even a seemingly unfair or harsh outcome if the claim for refund is untimely. (*Appeal of Estate of Gillespie, 2018-OTA-052P.*)

R&TC section 19316 provides a narrow exception for suspending the statute of limitations where an individual taxpayer is deemed “financially disabled.” Under this provision, the time for filing a claim for refund may be suspended during the period in which an individual taxpayer is financially disabled (as defined in R&TC section 19316(b)) if the taxpayer can establish such financial disability in accordance with the procedures and requirements specified by FTB. (R&TC, § 19316(a).) Pursuant to R&TC section 19316(b), a taxpayer is considered financially disabled if: (1) the individual 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) there is no spouse or other person who is legally authorized to act on the individual taxpayer’s behalf in financial matters during the relevant period. FTB imposes the additional requirement that a taxpayer submit an affidavit from a physician that identifies the period during which the taxpayer’s impairment rendered the taxpayer incapable of managing his or her financial affairs. (*Appeal of Estate of Gillespie, supra.*)

Regarding the narrow exception for financial disability, appellant did not provide any medical records or a physician’s affidavit, and does not allege that his injury was expected to last at least 12 months; thus, the statute of limitations cannot be tolled due to financial disability under R&TC section 19316. To the extent that appellant’s assertions constitute an equitable request or a claim of reasonable cause, OTA notes that the statute of limitations may not be tolled based on either equitable grounds or reasonable cause. (*Appeal of Benemi Partners, L.P., supra.*) While appellant’s personal circumstances are unfortunate, they are not legally sufficient to toll the statute of limitations in this appeal.

Because appellant’s claim for refund is time-barred by the statute of limitations and the limited statutory exception is inapplicable here, OTA has no grounds for granting the request for refund.

HOLDING

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

DISPOSITION

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

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

DocuSigned by:
Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 1/9/2025