

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: |) | OTA Case No. 240315559 |
| X. FOREMAN |) | |
| |) | |
| |) | |
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OPINION

Representing the Parties:

For Appellant: X. Foreman

For Respondent: David C. Cortez, Analyst

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, X. Foreman (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claims for refund of \$9,091.13 for the 2011 tax year, and \$3,244 for the 2012 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

Are appellant's claims for refund for the 2011 and 2012 tax year barred under the statute of limitations?

FACTUAL FINDINGS

2011 Tax Year

1. On January 3, 2013, respondent sent a Demand for Tax Return (Demand) to appellant to inform him that respondent had obtained information indicating appellant had a 2011 filing requirement. Appellant did not respond to the Demand.
2. Respondent subsequently sent a Notice of Proposed Assessment (NPA) to appellant on March 11, 2013, which estimated appellant's income and proposed a tax liability of \$4,570 (after application of withholding credits of \$5,687), a late filing penalty of

- \$1,142.50, a demand penalty of \$2,564.25, and a filing enforcement fee of \$82, plus applicable interest.
3. On September 15, 2023, appellant untimely filed a California income tax return for the 2011 tax year, reporting total tax of \$1,380, withholdings of \$5,688, and a refund due of \$4,308. Respondent accepted appellant's return as filed and abated all fees and penalties except the demand penalty, which respondent reduced to \$345.
 4. Respondent then sent appellant a letter to deny appellant's claim for refund due to the expiration of the statute of limitations. During this appeal, respondent states that its claim denial letter erroneously listed a claim for refund denial amount of \$9,091.13, instead of the correct amount of \$3,963.¹
 5. Appellant filed this timely appeal for the 2011 tax year.

2012 Tax Year

6. On January 29, 2024, respondent sent a Demand to appellant to inform him that respondent had obtained information indicating appellant had a 2012 filing requirement. Appellant did not respond to the Demand.
7. Respondent subsequently sent an NPA to appellant on April 21, 2014, which estimated appellant's income and proposed a tax liability of \$4,418 (after application of withholding credits of \$3,278), a late filing penalty of \$1,104.50, a demand penalty of \$1,924, a filing enforcement fee of \$78, plus applicable interest.
8. On September 15, 2023, appellant untimely filed a California income tax return for the 2012 tax year, reporting total tax of \$100, withholdings of \$3,291, and a refund due of \$3,191. Respondent accepted appellant's return as filed, abated the late filing penalty and filing enforcement fee, and reduced the demand penalty to \$25.
9. Respondent then sent a letter to appellant to deny appellant's claim for refund due to the expiration of the statute of limitations. During this appeal, respondent states that its

¹ During this appeal, respondent states that it incorrectly increased appellant's claim for refund by the amount of a bankruptcy write-off of \$4,183.12, plus a payment of \$945.01 incorrectly applied to appellant's 2011 tax year account which was subsequently transferred to the 2013 tax year, resulting in a claim denied of \$9,091.13. Respondent calculates the correct amount of appellant's claim for refund as the sum of the 2011 return's reported refund of \$4,308, minus the demand penalty of \$345, which equals \$3,963. Neither party dispute these changes, and OTA does not further address them in this Opinion.

claim denial letter erroneously listed \$3,244 as the amount of the claim denied, instead of the correct amount of \$3,155.²

10. Appellant timely filed this appeal for the 2012 tax year.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, 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 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 claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020–OTA–144P (*Benemi*).)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347, 351 (*Brockamp*) [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Benemi, supra.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Pursuant to R&TC section 19316, the time for filing a claim for refund may be extended if a taxpayer is "financially disabled," as defined by that provision. The running of the period for filing a claim for refund pursuant to R&TC section 19306 is suspended if: (1) "an 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 legally authorized person to act on the taxpayer's behalf in financial matters. When an appellant alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when

² During this appeal, respondent states that it incorrectly increased appellant's claim for refund by a bankruptcy write-off of \$89, resulting in a claim denied of \$3,244. Respondent calculates the correct amount of appellant's claim for refund as the sum of the 2012 return's reported refund due of \$3,191, minus the demand penalty of \$25, minus a collection fee of \$11, which equals \$3,155. Neither party dispute these changes, and OTA does not further address them in this Opinion.

appellant was unable to manage their financial affairs. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*).)

Appellant did not file timely returns for the 2011 and 2012 tax years during the extension period. As a result, the first four-year statute of limitations does not apply. The due dates for filing the 2011 and 2012 returns were April 15, 2012, and April 15, 2013, respectively, and the four-year statute of limitations expired four years later on April 15, 2016, and April 15, 2017, respectively. (R&TC, §§ 18566, 19306(a).) Appellant filed his 2011 and 2012 returns on September 15, 2023. Thus, appellant's claims for refund for the 2011 and 2012 tax years are untimely under the four-year statute of limitations.

Regarding the one-year statute of limitations, the time for appellant to claim refunds ends one year from the date of overpayment. Appellant's only tax payments for the 2011 and 2012 tax years were withholdings. Under R&TC section 19002(c)(1), tax deducted and withheld during the tax year is deemed to be paid on the original due date for the return (without regard to any extension of time for filing the return). Thus, the following deadlines apply: April 15, 2012, for the 2011 tax year; and April 15, 2013, for the 2012 tax year. (R&TC, §§ 18566, 19306(a).) Therefore, appellant's claims for refund are also barred under the one-year statute of limitations.

Appellant argues that a filing error by his tax preparer caused the 2011 and 2012 returns to be filed late. Appellant specifically argues that he timely submitted his California state tax returns to his tax preparer, but due to "issues" on the federal returns, the preparer failed to file the California returns. Appellant argues further that he experienced a partial medical disability in 2013 and was fully disabled beginning in 2014. In addition, appellant states that complications caused by the COVID-19 pandemic significantly hindered his ability to "engage with administrative tasks, including tax obligations."

Appellant's first argument, that the tax preparer's error contributed to the late filing of his returns for the 2011 and 2012 tax years, is a reasonable cause-type argument. As stated above, there is no reasonable cause to extend the statute of limitations. (*Brockamp, supra*.) The language of the statute must be strictly construed. (*Benemi, supra*.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*)

Regarding appellant's second argument, though OTA is sympathetic to the medical conditions that appellant has experienced, appellant has not provided a physician's affidavit that identifies the disability period when appellant was unable to manage his financial affairs. Appellant has not provided any information or evidence to prove that he had a medically

determinable physical or mental impairment that was either terminal or was expected to last for a continuous period of not less than 12 months and that there was no spouse or legally authorized person who could have filed the returns on his behalf, as required to suspend the statute of limitations. (*Gillespie, supra*; R&TC, § 19316(b).)

Finally, due to the COVID-19 pandemic, respondent postponed the statute of limitations to file a claim for refund for the 2016 tax year,³ and for years where the applicable statute of limitations to file a claim for refund fell between March 12, 2020, and July 15, 2020.⁴ These provisions do not apply to the statute of limitations for appellant's 2011 and 2012 claims for refund.

HOLDING

Appellant's claims for refund for the 2011 and 2012 tax years are barred under the statute of limitations.

DISPOSITION

Respondent's actions denying appellant's claims for refund for the 2011 and 2012 tax years are sustained.

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

We concur:

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Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 2/12/2025

³ See FTB, *State Postpones Deadline For Claiming 2016 Tax Refunds to May 17, 2021*, news release (April 26, 2021) www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-04-state-postpones-deadline-for-claiming-2016-tax-refunds-to-may-17-2021.html.

⁴ See FTB Notice 2020-02, *Time Sensitive Acts Postponed Due to the COVID-19 State of Emergency* (March 30, 2020) www.ftb.ca.gov/tax-pros/law/ftb-notices/2020-02.pdf.