

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
E. MARCHESI) OTA Case No. 230212569
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OPINION

Representing the Parties:

For Appellant: E. Marchesi
For Respondent: David Muradyan, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Marchesi (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,519 and \$1,825 for the 2016 and 2017 tax years, respectively.

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, (Regulation) section 30209(a).

ISSUE

Whether OTA has jurisdiction to consider appellant’s appeal from FTB’s denials of his October 10, 2022 refund claims for the 2016 and 2017 tax year, and if so, whether these claims were timely.

FACTUAL FINDINGS

Appellant’s First Refund Claims

1. On June 30, 2022, appellant late-filed his California Resident Income Tax Return (Return) for the 2016 and 2017 tax years. On the 2016 Return, appellant reported an

- overpayment of \$1,221 but claimed a refund of \$1,481.¹ On the 2017 Return, appellant reported an overpayment and claimed a refund of \$1,481.
2. On September 6, 2022, FTB issued Statute of Limitation notices to appellant denying his refund claims for the 2016 tax year and 2017 tax year (first denial notices) on grounds that they were filed outside the statute of limitations period for making a refund claim. The first denial notices informed appellant that if appellant believes FTB's action is incorrect, then appellant may file an appeal with OTA by December 5, 2022, within 90 days from the mailing.
 3. Appellant did not appeal the first denial notices with OTA.

Appellant's Second Refund Claims

4. On October 10, 2022, appellant filed an amended 2016 Return in which he claimed a refund of \$298 based on changes to his federal adjusted gross income (AGI) and deductions for the 2016 tax year.² Appellant explained in his amended 2016 Return that these changes were related to rental income which was not previously included in the original 2016 Return.
5. Also on October 10, 2022, appellant filed an amended 2017 Return in which he claimed an additional refund of \$344 in addition to the previously claimed refund of \$1,481, for a total of \$1,825. The amended 2017 Return reported different adjustments to appellant's federal AGI and California subtraction adjustments when compared to the original late filed 2017 Return.
6. FTB processed the amended 2016 and 2017 Returns. By notices dated November 1, 2022, and November 14, 2022, FTB denied appellant's second refund claims in the amounts of \$1,519 and \$1,825 for the 2016 and 2017 tax years, respectively, (second claim denial notices), also on grounds that they were filed outside the statute of limitations period for making a refund claim.
7. A timely appeal from FTB's second claim denial notices followed.

¹ By coincidence or error, although appellant claimed an overpayment of \$1,221 on the 2016 Return, he listed a refund amount of \$1,481, which is the same amount claimed as the refund for the late-filed 2017 Return. However, FTB issued its refund denial notice based on the \$1,221 amount for the 2016 tax year.

² Appellant's original late filed 2016 Return reported an overpayment of \$1,221, while the amended 2016 Return reported an overpayment of \$1,519. Therefore, appellant claimed an additional refund of \$298, representing the difference between the amended overpayment of \$1,519 and the original overpayment of \$1,221.

8. OTA issued additional briefing orders, requesting whether appellant is claiming financial disability under R&TC section 19316 to suspend the statute of limitations. OTA also requested appellant to submit a completed FTB Form 1564, if applicable. Appellant did not respond, and briefing closed.

DISCUSSION

Validity of Appellant's Second Refund Claims

OTA has jurisdiction to hear and decide appeals arising from FTB's denial of a taxpayer's refund claim. (R&TC, § 19324; Cal. Code Regs., tit. 18, § 30103(a)(3).) FTB disputes OTA's jurisdiction over this appeal on grounds that FTB's second claim denial notices do not provide appellant a basis for an appeal before OTA. FTB maintains that once an initial claim for refund denial is final, the filing of an identical second claim is "a nullity" and, therefore, invalid.

In this appeal, FTB asserts that appellant's failure to timely appeal to OTA the first denial notices within 90 days of their issuance rendered the initial refund denials final for the 2016 and 2017 tax years. Therefore, FTB asserts that appellant's subsequent refund claims, submitted after the initial denials became final, would be null and invalid. As a result, FTB asserts that since the second claim denial notices that form the basis of this appeal are null or invalid from the outset, appellant has not established jurisdiction for OTA to review the matter. As support, FTB cites *Appeal of Rossiter* (82-SBE-14) 1982 WL 11691 (*Rossiter*) and R&TC section 19321. FTB further contends that appellant's second refund claims were substantively identical to the initial refund claims and that they were denied for the same reason, that is, the expiration of the statute of limitations.

In *Rossiter*, the State Board of Equalization³ (BOE) held that when FTB denies an initial refund claim and that denial becomes final, the filing of an identical second claim is a nullity and provides no grounds for appeal. BOE concluded that such a second claim, being "without legal significance," does not establish jurisdiction for BOE review. In reaching this holding, BOE cited the U.S. Court of Federal Claims' longstanding jurisdictional rule, which treats the filing of a duplicate claim as a nullity in order to prevent taxpayers from circumventing the limitation period for filing an appeal by filing duplicate claims after the time for appealing the denial of the first claim had elapsed. (*B. Altman & Co. v. U.S.* (Ct.Cl. 1930) 69 Ct.Cl. 721, 727; *Allstate Ins. Co. v.*

³ Pursuant to Regulation section 30504, precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to OTA unless OTA removes, in whole or in part, the precedential status of that opinion.

U.S. (Ct.Cl. 1977) 213 Ct.Cl. 96, 104-105 (Allstate) [“The statute of limitations for the first claim remains with the first claim and is not transported to the second merely because the latter reasserts the former”].)

R&TC section 19321, which was enacted after *Rossiter* was decided, contains a similar prohibition and states that except to the extent allowed, a refund claim upon which FTB’s action has become final shall not thereafter be considered a refund claim. (R&TC, § 19321.) FTB’s action on a refund claim is final unless appealed to OTA within 90 days from the mailing of FTB’s claim denial notice. (R&TC, § 19324; see also Cal. Code Regs., tit. 18, § 30203(a)(3).) It is undisputed that appellant failed to appeal FTB’s first claim denial notices within 90 days of issuance and that they became final. Appellant’s second refund claims are therefore only valid to the extent they are not, as FTB contends, duplicates of his first claims.

A duplicate claim for jurisdictional purposes is one which asserts the same facts, grounds, and theories for recovery as set forth in a prior disallowed claim. (*Charlson Realty Co. v. U.S. (Ct.Cl. 1967) 181 Ct.Cl. 262, 269-272 (Charlson Realty)*.) A duplicate claim, however, does not include that portion of a claim that raises new grounds for a refund; rather, this portion “constitutes a separate claim which is entitled to independent treatment with reference to the statute of limitations.” (*Id.*, at p. 270.) When the “second claim is based on *different facts* or legal theories from those contained in the first, then the second claim may merit independent treatment. . . .” (*Huettl v. U. S.*, (9th Cir. 1982) 675 F.2d 239, 242 (*Huettl*); italics added.)⁴

Appellant requested a refund, which is \$298 more than the first claim for refund for the 2016 tax year and \$344 more than the first claim for refund for the 2017 tax year. These amounts, along with the self-reported adjustments to appellant’s original returns on which they are based, are derived from different facts that were not included in appellant’s first refund claims. Here, appellant filed the second refund claim based on changes to his federal AGI and deductions for both 2016 and 2017 tax years. Therefore, the new facts associated with the additional refund amounts requested in the second refund claim are not regarded as duplicate claims, but as a new claim. As noted above, R&TC section 19321 is concerned only with preventing the filing of duplicate claims. Thus, the statute simply does not apply where, as here, a taxpayer’s claim asserts different facts (i.e., changes to federal AGI and other deductions) for a refund. (See *Charlson Realty, supra*; see also *Huettl, supra*.)

⁴ When a California statute is substantially similar to a federal statute on the same or analogous subject, as in this appeal, the federal authority interpreting the federal statute is highly persuasive as to the proper interpretation of the California statute. (*Holmes v. McColgan* (1941) 17 Cal.2d 426.)

However, FTB is correct that all refund portions from the first denial notices (\$1,221 for the 2016 tax year and \$1,481 for the 2017 tax year) were final as those amounts concern the same facts from the prior claims. Accordingly, OTA lacks jurisdiction to consider appellant's second refund claims for those amounts from the first denial notices. (See R&TC, § 19321.)

In summary, OTA has jurisdiction over appellant's second claim of \$298 for the 2016 tax year and an additional refund of \$344 for the 2017 tax year. However, OTA does not have jurisdiction to decide appellant's initial claims for refund of \$1,221 for the 2016 tax year and \$1,481 for the 2017 tax year. Accordingly, OTA will address only the portions of appellant's second refund claims within its jurisdiction.

Timeliness of Appellant's Second Refund Claims

Appellant does not dispute that his second refund claims were filed outside the general limitation period for making a refund claim. Rather, appellant argues that the claims should be granted due to the personal difficulties he experienced during the past decade, such as the death of immediate family members, numerous medical issues (one of which was life threatening), and ongoing post-traumatic stress disorder related to his service in the U.S. Air Force.

The statute of limitations for filing a refund claim must be strictly construed, meaning that a taxpayer's untimely filing of a refund claim for *any reason* bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) However, the running of the statute of limitations may be suspended during any period where a taxpayer is "financially disabled." A 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)(1).) A taxpayer shall not be considered financially disabled for any period during which that taxpayer's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. (R&TC, § 19316(b)(2).) To prove financial disability, a taxpayer must provide a physician's affidavit, such as FTB Form 1564, which contains a description of the taxpayer's physical or mental impairment and the period of disability. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant claims financial disability due to personal difficulties, but has not submitted the required physician's affidavit or other supporting evidence. OTA also provided appellant the opportunity to supplement the record with additional briefing and specifically requested a completed FTB Form 1564 to support appellant's financial disability claim.

However, as of the date briefing closed for this appeal, appellant has not provided any response. Appellant’s failure to establish financial disability for the period prior to the filing of his second refund claims renders those claims untimely.

HOLDING

OTA has jurisdiction to consider appellant’s second refund claims for the 2016 tax year and for the 2017 tax year in the amount of \$298 and \$344, respectively, and OTA finds these claims are untimely. Additionally, OTA lacks jurisdiction to consider appellant’s initial refund claims for the 2016 tax year and for the 2017 tax year in the amount of \$1,221 and \$1,481, respectively.

DISPOSITION

FTB’s action denying appellant’s claims for refund for the 2016 and the 2017 tax years are sustained.

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Eddy Y. H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/6/2025