

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

G. HAIDER) OTA Case No. 230212672
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)**OPINION**

Representing the Parties:

For Appellant:

G. Haider

For Respondent:

Katrina LaMar, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Haider (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$5,667.59 for the 2013 tax year.¹

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

- Appellant did not file a timely tax return for the 2013 tax year. Respondent received information indicating that appellant had sufficient income to have a filing requirement. In 2015, respondent sent appellant a notice requesting a tax return or an explanation of why a tax return was not filed. After receiving no response, respondent issued a Notice of Proposed Assessment (NPA) proposing additional tax, penalties, and interest.

¹ Though appellant reported a refund due of \$5 on the 2013 California Resident Income Tax Return, she submits \$5,667.59 as the appeal amount, which is the amount respondent listed as an overpayment on its letter denying appellant's refund.

- Appellant did not respond to the NPA, so it became final. Respondent then issued notices to appellant demanding appellant pay the tax, penalties and interest due.²
2. Prior to issuing the aforementioned notices to appellant, respondent issued notices to appellant's husband, S. Haider (dec'd), stating that he owed tax and demanding that he pay the balance due. Subsequently, respondent received notice that S. Haider was deceased and therefore discharged the liability pursuant to Government Code section 12436.³
 3. On January 3, 2023, appellant sent respondent a copy of the death certificate for S. Haider and a joint California Resident Income Tax Return on Form 540 for the 2013 tax year which claimed a refund of \$5.
 4. Once respondent processed the tax return, the amount respondent had previously discharged on S. Haider's account appeared as a credit on appellant and S. Haider's joint account. Respondent sent a notice to appellant stating that her account showed a credit of \$5,667.59 but denying a refund because the statute of limitations had expired.
 5. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19306 sets forth the general statute of limitations for filing a claim for refund. It 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).) In an action for refund, the taxpayer has the burden of proof. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*).)

Because appellant did not file a timely tax return, the first four-year statute of limitations period is inapplicable. The second statute of limitations period expired on April 15, 2018, or four years from original due date, April 15, 2014. As appellant's claim for refund was not filed until January 3, 2023, it was not filed within this second statute of limitations period. The third statute of limitations period only applies to payments made within one year of the claim for

² In separate notices, respondent also requested a tax return from appellant's now-deceased husband and, receiving no return, issued an NPA proposing amounts due. Receiving no response, Respondent then issued billing notices to him reflecting amounts due.

³ Government Code section 12436 allows the State Controller to discharge from accountability a state agency for accounts that do not exceed a specified amount and authorizes the closing of the agency's books in regards to that matter.

refund. Since appellant did not make any payments for the tax year at issue within one year of her claim for refund, her claim for refund was also untimely under the one-year statute of limitations. As a result, her claim for refund is barred by the statute of limitations.

Appellant states that she legally separated from her husband in 2013-2014 and provided a power of attorney to him to file the tax return. She indicates that, before his death, he told her that they were not due a refund. She further states that she moved out of California and went through various health issues that involved multiple surgeries impacting her physical and cognitive skills, and that she was unaware that the tax return for tax year 2013 was not filed. She contends she changed her address before moving out of state in 2014 but did not receive any correspondence from respondent until 2022. She notes that respondent's refund denial notice indicates a credit balance on her account and seeks a refund of the credit balance. In support, she argues that she has been a timely tax filer in the past, has limited income, has a hard time completing tax tasks due to disability⁴ and needs the funds.

Although the Office of Tax Appeals is sympathetic to the difficulties that appellant describes, it must apply the statute of limitations. (*Gillespie, supra*.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Accordingly, the statute of limitations cannot be tolled based on appellant's assertions of good filing history, disability, and financial hardship. The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra*, citing *U.S. v. Brockamp* (1997) 519 U.S. 347 (*Brockamp*).) Neither OTA nor the courts can abrogate the statute of limitations for a refund claim based on equitable arguments. (*Gillespie, supra*; *Brockamp, supra*.)⁵

⁴ R&TC section 19316 suspends the statute of limitations where the 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. Appellant discloses certain health-related concerns occurring around the tax year at issue, but appellant has not submitted an FTB Form 1564, which requires a physician's affidavit, to claim a financial disability that might extend the statute of limitations period. (See R&TC, § 19316; *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) As to S. Haider's passing, California conforms to federal law in stating that a taxpayer's death does not constitute financial disability for purposes of tolling the statute of limitations. (*Appeal of Fischer*, 2024-OTA-518P.)

⁵ Even if appellant established a financial disability of sufficient length to make the refund claim timely, or otherwise had a timely claim for refund, it does not appear that appellant would be entitled to a refund of the \$5,667.59 credit amount shown in respondent's refund denial. Respondent contends that there is no actual credit on appellant's account, rather, that amount reflects a discharge of tax liability based on the passing of S. Haider, and not a true overpayment. Appellant's tax return only reports an overpayment of \$5.

HOLDING

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

DISPOSITION

Respondent's action denying appellant's claim for refund is sustained.

Signed by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

We concur:

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John O Johnson

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John O. Johnson
Administrative Law Judge

DocuSigned by:

Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

Date Issued: 3/11/2025