

FACTUAL FINDINGSTaxable Year 2017

1. FTB had no record of receiving appellants' California Resident Income Tax Return (Form 540) for the 2017 taxable year.
2. FTB received information showing appellant J. Goulden (appellant-husband) had a filing requirement and issued a Demand for Tax Return (Demand) to which appellant-husband did not respond.
3. FTB issued a Notice of Proposed Assessment (NPA) to appellant-husband for the 2017 taxable year, estimating his income and proposing tax, penalties (including a demand penalty), a fee, and interest. The NPA became final when appellant-husband failed to timely protest the NPA. FTB undertook collection action and received a payment from appellants' bank on October 11, 2021.
4. Appellants filed their Form 540 on June 15, 2023, reporting income tax withheld and overpaid tax.
5. FTB accepted appellants' Form 540 as filed, reduced the demand penalty to \$10,049.75, and computed an overpayment of \$13,761.52 for appellants' 2017 taxable year.
6. FTB denied appellants' claim for refund due to the expiration of the statute of limitations.

Taxable Year 2018

7. FTB had no record of receiving appellants' Form 540 for the 2018 taxable year.
8. FTB received information showing appellant-husband had a filing requirement and issued a Demand, to which appellant-husband did not respond.
9. FTB issued an NPA to appellant-husband estimating his income and proposing tax, penalties (including a demand penalty), a fee, and interest. The NPA became final when appellant-husband failed to timely protest the NPA. FTB undertook collection action and received a payment from appellants' bank on October 11, 2021.
10. Appellants filed their Form 540 on June 15, 2023, reporting income tax withheld and overpaid tax. Appellants resided at an address in Santa Clara County.
11. FTB accepted appellants' Form 540 as filed, reduced the demand penalty to \$14,408, and computed an overpayment of \$18,538.42 for appellants' 2018 taxable year.
12. FTB denied appellants' claim for refund due to the expiration of the statute of limitations.

Taxable Year 2019

13. FTB had no record of receiving appellants' Form 540 for the 2019 taxable year.

14. FTB received information showing appellant-husband had a filing requirement and issued a Demand on October 5, 2021. Appellant-husband did not respond by the due date of November 10, 2021.
15. FTB imposed a demand penalty of \$11,293, plus applicable interest, which appellants subsequently paid.
16. Appellants requested that FTB abate the demand penalty based on reasonable cause.
17. FTB denied appellants' request for abatement.

Taxable Year 2020

18. FTB had no record of receiving appellants' Form 540 for the 2020 taxable year.
19. FTB received information showing appellant-husband had a filing requirement and issued a Demand on October 18, 2022. Appellant-husband did not respond by the due date of November 23, 2022.
20. FTB imposed a demand penalty of \$13,787.25, plus applicable interest, which appellants paid.
21. Appellants requested that FTB abate the demand penalty based on reasonable cause.
22. FTB denied appellants' request for abatement.

Appeals

23. Appellants filed two timely appeals, which OTA consolidated.

DISCUSSION

Issue 1: Is appellants' claim for refund barred by the statute of limitations for taxable year 2017?

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. For purposes of R&TC section 19306, amounts withheld are deemed to be paid on the original return due date. (R&TC, § 19002(c)(1).)

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) Absent a statutory 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.*) However, the statute of limitations may be suspended where a taxpayer establishes financial disability, which applies when a 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. (R&TC, § 19316(a),(b)(1).) An individual is not considered financially disabled for any period during which that individual's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. (R&TC, § 19316(b)(2).)

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. (*Appeal of Benemi Partners, LP, supra.*) Moreover, fixed deadlines may appear harsh because they can be missed; however, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*) 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.*)

Here, appellants' 2017 tax return, which was untimely filed on June 15, 2023, is treated as appellants' claim for refund. The applicable four-year statute of limitations period for appellants' 2017 refund claim expired on April 15, 2022, which is four years from the original due date of the return, April 15, 2018. (R&TC, §§ 19036(a), 18566.)

Under the one-year statute of limitations period, appellants were required to file a refund claim for withholdings no later than April 15, 2019, which is one year from April 15, 2018, the date appellants' withholdings for the 2017 taxable year were deemed paid. (R&TC, § 19002(c)(1).) As part of FTB's collection action, a payment from appellants' bank was applied towards appellants' 2017 tax year account as of October 11, 2021. The one-year statute of limitations period for that payment expired on October 11, 2022. Therefore, the statute of limitations expired, and appellants may not receive a refund of their overpayment unless a statutory exception applies.

Appellants seem to claim financial disability related to struggles to care for an ailing parent. Appellants also claim that their circumstances caused depression and anxiety that prevented them from filing timely tax returns. However, with respect to struggles related to caring for an ailing parent, the financial disability must be that of the taxpayer, not a taxpayer's relative. (See R&TC, § 19316(b)(1).) Moreover, appellants did not submit a sworn affidavit from a physician with supporting medical records of financial disability based on anxiety and depression, which is required to establish financial disability for the relevant time periods. (*Appeal of Estate of Gillespie, supra.*)

To the extent appellants argue that their circumstances constitute reasonable cause to extend the statute of limitations, there is no reasonable cause exception to the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) Appellants' claim for refund for taxable year 2017 is barred by the statute of limitations.

Issue 2: Is appellants' claim for refund barred by the statute of limitations for taxable year 2018?

For taxable year 2018, appellants' Form 540, which was untimely filed on June 15, 2023, is treated as appellants' claim for refund. The applicable four-year statute of limitations period for appellants' 2018 refund claim expired on April 15, 2023, which is four years from the original due date of the return, April 15, 2019. (R&TC, §§ 19306(a), 18566.)

However, due to the 2023 California winter storms, the IRS issued Notices CA-2023-01 and CA-2023-02 that granted affected taxpayers until May 15, 2023, to perform time-sensitive actions described in Treasury Regulation section 301.7508A-1(c)(1), which expressly includes filing a claim for credit or refund of any tax. (Treas. Reg. § 301.7508A-1(c)(1)(v).) This May 15, 2023 deadline was later extended to October 16, 2023, and subsequently to November 16, 2023.³ The postponement relates to certain deadlines falling on or after January 8, 2023, through November 16, 2023, and applies to "individuals and households affected by severe winter storms, flooding, and mudslides that reside or have a business" in certain California counties.⁴ Appellants' residence listed on the 2018 return was located in Santa Clara County, which is a qualifying county. In addition, the original deadline for appellants to file a claim for refund was April 15, 2023, which is during the applicable postponement period of January 8, 2023, to November 16, 2023.

In a news release, FTB stated that it conformed to IR-2023-189, which extended the federal deadline for those affected by the 2023 California winter storms to November 16, 2023.⁵ In that same news release, FTB also stated that it "generally conforms to the IRS postponement periods for presidentially declared disasters."⁶ Therefore, appellants timely filed a claim for

³ See IR-2023-189, Oct. 16, 2023, available at: www.irs.gov/newsroom/for-california-storm-victims-irs-postpones-tax-filing-and-tax-payment-deadline-to-nov-16.

⁴ Counties qualifying for relief include all counties except Lassen, Modoc, and Shasta. See www.irs.gov/newsroom/irs-announces-tax-relief-for-victims-of-severe-winter-storms-flooding-and-mudslides-in-california.

⁵ See www.ftb.ca.gov/about-ftb/newsroom/news-releases/10-16-extended-tax-deadline.html; see also www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html.

refund on June 15, 2023, within FTB's postponement period, which postponed the four-year statute of limitations to timely file a claim for refund to November 16, 2023.

Issue 3: Have appellants established reasonable cause to abate the demand penalty for taxable years 2019 and 2020?

If any taxpayer fails or refuses to file a tax return or provide information upon notice and demand by FTB, then, unless the failure is due to reasonable cause and not willful neglect, FTB may add a penalty of 25 percent of any deficiency assessed by FTB. (R&TC, § 19133.) The demand penalty will only be imposed if: (1) the taxpayer fails to timely respond to a current Demand, and (2) FTB has proposed an assessment of tax after the taxpayer failed to timely respond to a Demand in the manner prescribed, for any taxable year that is within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued. (Cal. Code Regs., tit. 18, § 19133(b).)

To establish reasonable cause, a taxpayer must show that the failure to reply to a Demand occurred despite the exercise of ordinary business care and prudence. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) A taxpayer's reason for failing to respond to a Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*) The taxpayers' selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

Appellants relate a compelling story of a family member's illness and their corresponding struggles in dealing with that family member during the taxable years at issue. Appellants assert that when appellant-wife was immobilized for two months in Spring 2018, they became

⁶ FTB's authority to grant state of emergency postponements for tax-related acts is found in R&TC section 18572(b), which adopts Internal Revenue Code (IRC) section 7508A. (See *Appeal of Bannon*, 2023-OTA-096P.) When applying the IRC for purposes of California personal income tax, IRS Treasury Regulations shall be applicable to the extent that they do not conflict with California personal income tax code sections or regulations. (R&TC, § 17024.5.)

overwhelmed and failed to file taxes for the first time. Appellant-husband states that “[t]he overwhelming stress of my job, unresolved financial issues and my persistent mental health [led] me to take on a new job in 2021 which reduced my income and I hoped would help with my mental health.” Appellants contend that as soon as the COVID-19 shutdown was lifted, they hired a tax preparer to assist with filing back taxes. Appellants also assert that the failure to file, and presumably to respond to the Demand, was not willful, and taxes had already been paid through withholdings.

Here, the demand penalty is at issue, not a late-payment penalty. The penalty applies for taxable years 2019 and 2020 because appellants failed to respond to Demands sent to them by FTB, and FTB proposed an assessment of tax after appellants failed to timely respond to a Demand within the four taxable years preceding 2019 and 2020; namely, 2018.⁷ For taxable year 2019, the Demand was sent on October 5, 2021, with a response due by November 10, 2021. Appellants state that in fall of 2021, they hired a tax preparer, but appellants do not explain why they could not have responded to the Demand by November 10 of the same year or why it took until June 15, 2023 (a year and a half later) to actually file the 2019 tax return. For taxable year 2020, the Demand was sent on October 18, 2022, with a response due by November 23, 2022. Similarly, appellants have not explained why they were unable to respond to FTB by November 23, 2022, more than a year after they allegedly hired a tax preparer. Despite the challenges appellants faced throughout 2019 and 2020, appellants were able to earn significant income, suggesting that appellants sacrificed the timeliness of their tax filing obligations to pursue other obligations, which does not constitute reasonable cause. (See *Appeal of Head and Feliciano*, *supra*.) For the foregoing reasons, appellants have not established reasonable cause to abate the penalties.

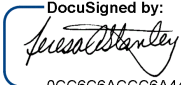
⁷ FTB also assessed a demand penalty for 2017, which suggests that 2017 was not the first year appellants failed to reply to a Request for Tax Return or a Demand. However, information relating to tax years prior to 2017 is not in OTA’s record.

HOLDINGS

1. Appellants' claim for refund for taxable year 2017 is barred by the statute of limitations.
2. Appellants' claim for refund for taxable year 2018 was timely.
3. Appellants have not established reasonable cause to abate the demand penalty for taxable years 2019 or 2020.

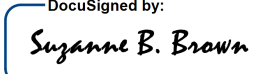
DISPOSITION

FTB's action denying appellants' claim for refund for taxable year 2018 is reversed.
 FTB's actions denying appellants' claims for refund for taxable years 2017, 2019, and 2020 are sustained.

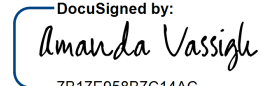
DocuSigned by:

 0CC6C6ACCC6A44D...

 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

 47F46ADE90E34D0...

 Suzanne B. Brown
 Administrative Law Judge

DocuSigned by:

 7B17E958B7C14AC...

 Amanda Vassigh
 Administrative Law Judge

Date Issued: 3/10/2025