

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. BORN (DEC'D)) OTA Case No. 240315752
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OPINION

Representing the Parties:

For Appellant: Michael Walsh, Trustee
For Respondent: Vivian Ho, Attorney
Maria Brosterhous, Attorney Supervisor

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Born (dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$3,468.59 for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05.) Office of Tax Appeals (OTA) Administrative Law Judge Cheryl L. Akin held an oral hearing for this matter in Sacramento, California on December 17, 2024. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant was admitted to assisted living in February 2016.
2. Pursuant to the trust instrument for appellant's 2007 trust, both Michael Walsh and E. Walsh were named as successor co-trustees and both were authorized to handle appellant's legal and financial matters beginning in 2016.¹
3. On April 18, 2019, appellant's doctor drafted a letter stating that appellant "lacks the capacity to make decisions due to dementia." The letter further stated that appellant's nephews, Michael Walsh and E. Walsh, "have been caring for her well and taking care of her legal affairs."
4. Appellant did not timely file a tax return for the 2017 tax year.
5. FTB received information indicating that appellant received sufficient income during the 2017 tax year to trigger a filing requirement.
6. On April 26, 2019, FTB sent appellant a Request for Tax Return (Request). The Request provided appellant until May 29, 2019, to respond by filing a 2017 California income tax return, provide a copy of the return if one had already been filed, or to provide evidence establishing that she did not have a 2017 filing requirement.
7. Appellant did not respond to the Request and on July 26, 2019, FTB issued a Notice of Proposed Assessment (NPA) to appellant. The NPA estimated appellant's income and proposed total tax of \$2,625. After application of California tax withheld of \$180, the NPA proposed tax due of \$2,445, and imposed a late filing penalty of \$611.25, plus applicable interest.
8. Appellant did not timely protest the NPA and the tax, penalty, and interest became due and payable.
9. On October 21, 2019, FTB sent appellant a State Income Tax Balance Due Notice (Tax Due Notice), requesting payment of the balance due for the 2017 tax year.
10. The Request, NPA, and Tax Due Notice were sent to appellant's Post Office (P.O.) Box in San Francisco, California.
11. On November 4, 2019, appellant's address with FTB was updated to E. Walsh's address in San Francisco, California.
12. On December 9, 2019, FTB sent a second Tax Due Notice to appellant at the address for E. Walsh reflecting a balance due of \$3,307.78.

¹ At the hearing, Mr. Michael Walsh confirmed that both he and E. Walsh "were authorized to handle [appellant's] legal and financial matters under the [T.] Born 2007 trust starting from 2016."

13. E. Walsh paid the \$3,307.78 balance due via check which was applied to appellant's 2017 tax account on December 31, 2019.
14. Appellant passed away on May 25, 2023.
15. On February 14, 2024, Michael Walsh filed a 2017 California Resident Income Tax Return on appellant's behalf reporting total tax of \$34.
16. FTB accepted appellant's return as filed and treated it as a claim for refund in the amount of \$3,468.59.
17. FTB denied appellant's claim for refund based on the expiration of the statute of limitations.
18. This timely appeal followed.

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 filed timely 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 Estate of Gillespie*, 2018-OTA-052P.)

Here, the first four-year statute of limitations period is not applicable because appellant did not timely file her 2017 tax return pursuant to an extension of time to file. The second four-year statute of limitations period expired on April 15, 2022, four years from the April 15, 2018 original filing deadline for appellant's 2017 return. (R&TC, §§ 19306(a), 18566.) Appellant's 2017 return (treated as appellant's claim for refund) was not filed until February 14, 2024, more than a year and nine months after the expiration of the second four-year statute of limitations period on April 15, 2022. As such, appellant's claim for refund is untimely and barred under the four-year statute of limitations.

The one-year statute of limitations runs one year from the date of the overpayment. Here appellant has two payments: California withholdings of \$180 and a payment of \$3,468.59 on December 31, 2019. Withholdings are deemed paid on the original due date for filing the return. (R&TC, § 19002(c)(1).) As such, appellant's withholdings are deemed paid on April 15, 2018, and the one-year statute of limitations period for appellant's withholdings and tax

payment expired on April 15, 2019, and December 31, 2020, respectively. Thus, appellant's claim for refund filed on February 14, 2024, is also barred by the one-year statute of limitations.

On appeal, appellant acknowledges that the claim for refund was filed after the expiration of the statute of limitations but contends that there were extenuating circumstances which prevented the filing of appellant's return (treated as appellant's claim for refund) earlier. As such, appellant requests "consideration" of these circumstances and that at least part of appellant's refund be allowed.

Mr. Walsh testified at the hearing that in 2016, appellant, his aunt, suffered a debilitating stroke, needed 24-hour care, and was admitted into assisted living. Mr. Walsh notes that while he and E. Walsh were authorized to act on appellant's behalf in financial and legal matters, unbeknownst to them, appellant opened a P.O. Box and started to have important mail sent there. Because of this, Mr. Walsh and E. Walsh never received appellant's 2017 W-2 forms and were unable to complete appellant's tax return. Mr. Walsh testified that appellant was unable to inform him or E. Walsh about the P.O. Box because of her stroke. Mr. Walsh further described the great difficulty he had obtaining appellant's tax information including the W-2 forms, accessing appellant's P.O. Box, and changing appellant's address. Mr. Walsh explained that people were reluctant to assist him or provide him with information because he was not appellant. Mr. Walsh further explained that without the W-2 forms, he and E. Walsh were unable to file appellant's 2017 tax return and that they paid the tax due per the Tax Due Notice in good faith because they were unaware that appellant did not in fact owe the tax assessed by FTB. Mr. Walsh further described various hardships and difficulties he and his family faced during the relevant time period, including a death, a family member's difficult divorce, and illness of another family member.

OTA understands appellant's arguments regarding the extenuating circumstances noted above. However, these are equitable or reasonable cause type arguments, and the law does not permit the suspending of the statute of limitations based on reasonable cause or equity. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) 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.*) Neither ill health of a taxpayer nor any other unfortunate circumstances can extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie*,


supra.)² Although the results of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*) While OTA is sympathetic of the circumstances faced by appellant, Mr. Walsh, and their family, without a legislatively enacted exception to the statute of limitations, OTA does not have the legal authority to alter the outcome of this matter in a more satisfactory way for appellant. (See *Appeal of Estate of Gillespie, supra.*)

HOLDING

Appellant's claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

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

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 2/19/2025

² For purposes of the Personal Income Tax Law, the statute of limitations may be tolled during any period for which an individual taxpayer establishes a financial disability. (R&TC, § 19316(a).) A taxpayer is financially disabled if: (1) 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, and (2) there is no spouse or other legally authorized person to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b).) Despite appellant's stroke in 2016 and diagnosis with dementia on or before April 18, 2019, the statutory exception for financial disability does not apply here since both Michael Walsh and E. Walsh were authorized to act on appellant's behalf in financial matters beginning in 2016.