

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 240415822
<b>R. ALMAZAN</b>	)	
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**OPINION**

Representing the Parties:

For Appellant:	R. Almazan
For Respondent:	Sophie Kuehl, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Almazan (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claims for refund of \$1,903.66 and \$915 for the 2008 and 2011 tax years, respectively.

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.)

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 2008 and 2011 tax years barred by the statute of limitations?

FACTUAL FINDINGS*2008 tax year*

1. Appellant is a disabled veteran. On February 4, 2010, appellant's combined disability rating, as determined by the U.S. Department of Veteran Affairs, was zero; on December 2, 2019, it was 70 percent; on August 10, 2022, it was 90 percent; and on May 3, 2023, it was 100 percent.
2. Respondent received information indicating that appellant, a California resident, held an active professional or business license and earned income during the 2008 tax year. Based on that information, respondent estimated that appellant had sufficient income to require him to file a California Resident Income Tax Return (return) for the 2008 tax year.
3. When appellant did not timely file a return, respondent issued a Demand for Tax Return (Demand) to appellant on March 11, 2010. The Demand instructed appellant to respond by April 14, 2010, by filing a 2008 return, providing a copy of the requested return, if already filed, or explaining why appellant was not required to file a return.
4. Appellant did not timely respond to the Demand, and on May 17, 2010, respondent issued a Notice of Proposed Assessment (NPA) for \$3,121 in tax, a late filing penalty of \$780.25, a demand penalty of \$780.25, a filing enforcement fee of \$113, and interest. The NPA informed appellant that the proposed assessment would become due and payable on July 16, 2010, if respondent did not receive appellant's 2008 return or a protest of the NPA by that date.
5. When appellant did not respond to the NPA, the proposed assessment became due and payable on July 16, 2010.
6. Respondent received payments toward the liability on October 3, 2014, June 17, 2021, July 28, 2021, and September 17, 2021.

*2011 tax year*

7. Respondent received information indicating that appellant held an active professional or business license and earned income during the 2011 tax year. Based on that information, respondent estimated that appellant had sufficient income to require him to file a return for that year.
8. When appellant did not timely file a 2011 return, respondent issued a Demand to appellant on January 25, 2013. The Demand instructed appellant to respond to the demand (as indicated above) by February 27, 2013.

9. Appellant did not timely respond to the Demand, and on April 2, 2013, respondent issued an NPA for \$2,903 in tax, a late filing penalty of \$725.75, a demand penalty of \$725.75, a filing enforcement fee of \$82, and interest. The NPA informed appellant that the proposed assessment would become due and payable on June 3, 2013, if respondent did not receive appellant's 2011 return or a protest of the NPA by that date.
10. When appellant did not respond to the NPA, the proposed assessment became due and payable on June 3, 2013.
11. Respondent received one payment toward the liability on April 15, 2014.

*Claims for Refund*

12. On February 20, 2024, respondent received appellant's 2008 and 2011 returns, which reported no income or tax due. Respondent accepted and processed the returns, reducing the tax to zero, abating the penalties and fee, and treating the returns as claims for refund of the overpayments.
13. By letter dated March 25, 2024, respondent informed appellant that the claims for refund were denied because both were barred by the statute of limitations.
14. This timely appeal followed.
15. In its May 22, 2024 opening brief in this appeal, respondent informed appellant that the limitations period for filing a claim for refund can be suspended or tolled on proof of a financial disability, which generally requires proof that jointly filing taxpayers were unable to manage their own 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 not less than 12 months and that there was no other person legally authorized to act on the taxpayers' behalf in financial matters. Respondent also provided appellant a copy of a blank Physician's Affidavit of Physical or Mental Impairment (FTB Form 1564) and encouraged appellant to return the completed FTB Form 1564. By letter dated October 9, 2024, OTA gave appellant another opportunity to provide evidence of physical or mental impairment.
16. OTA received no additional documents from appellant. However, OTA received a copy of a January 23, 2025 letter from FTB to appellant, which acknowledged receipt of medical records. The letter also informed appellant that respondent still needed the completed FTB Form 1564 and that appellant should provide everything to OTA if appellant wanted those documents to be considered by OTA as part of its record.

17. Appellant still has not provided a completed FTB Form 1564 or other sufficient evidence of appellant's and his spouse's physical or mental impairment during the relevant time.

### DISCUSSION

Statutes of limitations prescribe the period of time allowed to assert a legal right. As relevant here, a claim for credit or refund must be filed: (1) within four years from the date the return was filed, if filed within the six-month automatic extension allowed by respondent, (2) within four years from the last day prescribed for filing the return without regard to any such extension, or (3) within one year from the date of the overpayment, whichever time period expires last. (R&TC, § 19306(a).) Statutes of limitations are strictly construed and, absent legislative authority, OTA cannot relieve a taxpayer of what may at times be the harsh results of such fixed deadlines. (*Estate of Gillespie*, 2018-OTA-052P.) Considering the scope of the tax administration systems and the vast numbers of claims for refund, the law considers such harsh results an acceptable consequence of having an important obligation clearly defined and strictly enforced. (*Ibid.*; *Appeal of Khan*, 2020-OTA-126P.) Nevertheless, the Legislature has authorized relief under the narrow circumstances described below.

Generally, ill health of the taxpayer or other unfortunate circumstances do not toll or extend the period within which a claim may be filed and deemed timely. However, the statute of limitations applicable to certain claims for refund is suspended for the period during which the taxpayer is "financially disabled." (R&TC, § 19316.) R&TC section 19316 identifies two requirements to prove an individual taxpayer is financially disabled: (1) the taxpayer must be incapable of managing his or her financial affairs due to a medically determinable physical or mental impairment that is either deemed to be terminal or is expected to last for a continuous period of at least 12 months; and (2) the taxpayer must not have a spouse or any other person legally authorized to act on the taxpayer's behalf in financial matters.<sup>1</sup> (R&TC, § 19316(b)(1), (2).)

The Legislature granted respondent the authority to specify the procedures and requirements for establishing the financial disability of an individual taxpayer. (R&TC, § 19316(a).) Respondent did so when it published Form 1564 with instructions, which provide that the taxpayer must prove the financial disability.<sup>2</sup> In this latter regard, the instructions to

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<sup>1</sup> Section 19316 does not define "terminal."

<sup>2</sup> California Code of Regulations, title 18, section 30219, states that except as otherwise provided by law, appellant has the burden of proof (by a preponderance of the evidence) as to all issues of fact. A preponderance of evidence means that the taxpayer must establish by documentation or other evidence

Form 1564 state that if the IRS determines a taxpayer is financially disabled, respondent will follow that determination; but if there is no such determination by the IRS, Form 1564 must be used to obtain a Physician Affidavit of Physical or Mental Impairment (Affidavit) from the taxpayer's physician. To establish financial disability, a taxpayer must, at a minimum, provide the required Form 1564, including the Affidavit. (*Appeal of Meek* (2006-SBE-01) 2006 WL 864344.) However, submission of a completed Form 1564 (including the Affidavit) is not necessarily determinative. If there is reason to suspect fraud or forgery, or if the veracity or accuracy of the Affidavit is called into question, additional proof, such as medical records, may be required. (*Appeal of Meek, supra.*)

The undisputed evidence shows that appellant did not timely file the 2008 or 2011 returns. Consequently, the first described limitations period does not apply. To be timely under the second described limitations period, appellant's claims for refund (i.e. his returns) had to be filed by April 15, 2013, for the 2008 tax year, and by April 15, 2016, for the 2011 tax year. Appellant's returns were filed on February 20, 2024, long after that statute of limitations had expired. The last-described applicable limitations period expired no later than September 17, 2022, one year after the last payment received by respondent. Appellant did not file the claims until February 20, 2024, more than a year after the last limitations period expired. Appellant does not dispute these facts. Based on the evidence, OTA finds that, absent suspension of the statute of limitation for financial disability, both of appellant's claims are barred.

Appellant states that he is a 100 percent disabled veteran who has struggled for 50 years with serious health issues that have impaired his ability to function. According to appellant, his wife is also currently disabled. Appellant argues that the assessments at issue were "fictitious," and that had respondent based its actions on fact, this hardship to appellant and his family could have been avoided. In support of his arguments, appellant has provided several documents from the National Archives and the Department of Veteran's Affairs. These confirm appellant's separation from the U.S. Navy and appellant's combined disability ratings of zero percent in February 2010, 70 percent in December 2019, 90 percent in August 2022, and 100 percent in May 2023. Appellant has also provided what appears to be a list of 17 medications that appellant takes, all but one on a daily basis.

OTA appreciates appellant's service to his country, and it does not doubt that the Department of Veteran's Affairs considers appellant to be 100 percent disabled as of May of

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that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)


2023. However, the evidence does not include the required Form 1564s and Affidavits to establish that both appellant and his wife were financially disabled and thus incapable of managing their financial affairs at any relevant time.<sup>3</sup> Therefore, OTA finds that there was no suspension of the statute of limitations due to financial disability and that appellant's claims are barred.

#### HOLDING

Appellant's claims for refund for the 2008 and 2011 tax years are barred by the statute of limitations.

#### DISPOSITION

Respondent's actions denying appellant's claims for refund for the 2008 and 2011 tax years are sustained.

DocuSigned by:  
  
Michael F. Geary  
Administrative Law Judge

Date Issued: 3/21/2025

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<sup>3</sup> Because the overpayments were received by respondent on various dates from April 15, 2014, through September 17, 2021, the relevant time is from April 15, 2014 (the date of the earliest payment) through September 17, 2022 (one year after the date of the last payment).