

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. RIVAS) OTA Case No. 240315712
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OPINION

Representing the Parties:

For Appellant: M. Rivas
For Respondent: Tristen Thalhuber, Attorney
Jaclyn Zumaeda, Deputy Chief Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Rivas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$15,664.92 for the 2017 tax year.

Office of Tax Appeals (OTA) Panel Members Sara A. Hosey, Veronica I. Long, and Kim Wilson held an oral hearing for this matter in Fresno, California on April 22, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion 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.¹

FACTUAL FINDINGS

1. FTB issued a Request for Tax Return (Request) to appellant on April 23, 2019, for the 2017 tax year when no return had been filed.
2. FTB issued a Notice of Proposed Assessment (NPA) on September 27, 2019, when appellant failed to respond to the Request.

¹ Appellant mentioned refunds for tax years 2019, 2020, 2021, and 2022, but OTA does not have Notices of Action or denials for claims for refund for these tax years. Therefore, these tax years will not be discussed in this Opinion, as OTA does not have proper jurisdiction.

3. The NPA estimated appellant's income, proposed a total tax of \$13,253, a late filing penalty of \$3,313.25, and interest. The NPA stated that the proposed assessment would become due and payable on November 26, 2019, unless FTB received appellant's 2017 tax return or protest.
4. Appellant did not respond to the NPA, the assessment went final, and the balance became due and payable. On December 23, 2019, FTB issued a State Income Tax Balance Due Notice advising appellant that collection action may commence if appellant did not pay the balance within 30 days of the notice.
5. On August 10, 2020, FTB issued a Final Notice Before Levy and Lien informing appellant that in the absence of payment within 30 days, FTB would take collection action. FTB then initiated collection activity, imposed a collection cost recovery fee, and received several payments on appellant's 2017 tax year account.
6. On March 15, 2024, FTB received appellant's late-filed 2017 California Resident Income Tax Return, reporting California adjusted gross income, taxable income of \$0, and total tax due of \$0.
7. FTB processed the return and accepted the reported tax. FTB abated the late filing penalty but the collection cost recovery fee of \$316 remained.
8. Appellant had total payments of \$17,541.45, which FTB determined was the remaining overpayment on appellant's 2017 tax year account. FTB only refunded the payments that were received within one year of the claim for refund: \$496.54 and \$1,063.99 to appellant's 2019 and 2020 tax year accounts, respectively.
9. FTB issued a Statute of Limitations Notice denying the remainder of appellant's claim for refund on February 20, 2024.
10. Appellant then 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, 2022, or four years from original due date, April 15, 2018. As appellant's claim for refund was not filed until March 15, 2024, it was not filed within this second statute of limitations period. The third statute of limitations period applies to payments made within one year of the claim for refund. FTB refunded the two payments that were received within one year of the claim for refund: \$496.54 and \$1,063.99. Therefore, the remainder of her claim for refund is barred by the statute of limitations.

The law does not provide for the waiver of the statutory period based on reasonable cause or extenuating circumstances. (*Gillespie, supra.*) OTA has consistently held that the statute of limitations for filing a refund claim must be strictly construed; in other words, a taxpayer's untimely filing of a refund claim for any reason bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even if, as occurred here, it is later shown that the tax was not owed in the first place. (*Ibid.*) Further, FTB has no obligation to discover or inform taxpayers of any overpayment. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Nor does the law require FTB to notify taxpayers of the time in which to file a refund claim. (*Appeal of Shagets* (82-SBE-170) 1982 WL 11847.)

Appellant argues that the statute of limitations should not bar her claim for refund based on reasonable cause due to personal difficulty and financial disability. Appellant testified that she was aware of the filing obligations, but that she was prevented from filing because of her circumstances. Specifically, appellant testifies that a work accident in 2013, plus multiple medical procedures between 2017 and 2019 along with the symptoms associated with those procedures, the passing of appellant's fiancée in 2020, financial hardship, and difficulties obtaining employment, prevented appellant from claiming a refund within the statute of limitations.

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).) To prove financial disability, a taxpayer must provide a physician's affidavit which contains a description of the taxpayer's physical or mental impairment and the period of disability. (*Gillespie, supra.*) To the extent appellant argues the statute of limitations should be suspended due to financial disability,

appellant has not provided the requisite physician’s affidavit.² Appellant’s failure to establish that she was financially disabled for a sufficient time prior to the filing of her claim on March 15, 2024, means that the claim is untimely. (*Gillespie, supra.*)

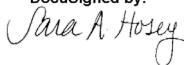
Although OTA is very sympathetic to the difficulties that appellant describes, it is required by law to apply the statute of limitations. (*Gillespie, supra.*) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) The statute of limitations cannot be tolled based on appellant’s assertions of difficult circumstances, 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.*)

HOLDING


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

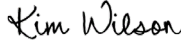
DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

Signed by:

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Kim Wilson
Hearing Officer

Date Issued: 6/13/2025

² On appeal, FTB provided appellant with a copy of this form and its instructions. After the prehearing conference in which FTB informed appellant of the requirement of the form for it to consider financial disability, the form was again provided to appellant.