

In the Matter of the Appeal of:) OTA Case No. 241218332
R. ROSE)
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2. Appellant did not file a timely California income tax return for the 2017 tax year.
3. On August 25, 2020, FTB issued appellant a Demand for Tax Return, stating that it received information that appellant made mortgage payments in 2017. The letter stated that the mortgage payments indicate that appellant may have a California filing requirement. The letter required appellant to file a return or explain why no return was required. After further correspondence, FTB deferred the due date to file a return in

- response to the demand from September 30, 2020, to October 30, 2020. FTB did not receive a return from appellant by the October 30, 2020 due date.
4. On December 29, 2020, FTB issued appellant a Notice of Proposed Assessment (NPA) estimating appellant's taxable income based on mortgage interest reported on a federal Form 1098. The NPA proposed a tax of \$4,590, imposed a late filing penalty of \$1,147.50, a penalty for failure to file upon notice and demand (demand penalty) of \$1,147.50, a filing enforcement fee of \$97, and applicable interest. FTB did not receive a response to the NPA and the liability became final.
 5. Thereafter, FTB received payments of \$1,169.69 on May 17, 2022, and \$7,300.44 on July 5, 2022, which satisfied the liability.
 6. On August 26, 2024, appellant filed a California Nonresident or Part-Year Resident Income Tax Return (540NR) for the 2017 tax year. FTB accepted the return and treated it as a claim for refund in the amount of \$8,154.13, which it denied based on the expiration of the statute of limitations.

2018 Tax Year

7. Appellant did not file a timely return for the 2018 tax year.
8. On May 18, 2021, FTB issued appellant a Demand for Tax Return for the 2018 tax year, stating that it received information that appellant made mortgage payments in 2018. The letter required appellant to file a return or explain why no return was required. FTB did not receive a response.
9. On July 30, 2021, FTB issued appellant an NPA estimating appellant's taxable income based on mortgage interest reported on a federal Form 1098 and proposing a tax of \$4,269. FTB also imposed a late filing penalty of \$1,067.25, a demand penalty of \$1,067.25, a filing enforcement fee of \$97, and applicable interest. Appellant did not protest the NPA and the liability became final.
10. On October 25, 2021, FTB issued to appellant a State Income Tax Balance Due Notice for the 2018 tax year.
11. On March 21, 2022, FTB issued to appellant a Telephone Contact Request, once against stating the balance due and requesting that appellant contact FTB.
12. On June 3, 2022, FTB issued an Electronic Order to Withhold Personal Income Tax to appellant's bank for the balance due for the 2018 tax year.
13. From June 6, 2022, through June 27, 2022, appellant was on military leave overseas.

14. FTB began collection actions and received payments of \$7,270.71 on July 5, 2022, and \$37.04 on October 15, 2022.
15. On August 26, 2024, appellant filed a California Nonresident or Part-Year Resident Income Tax Return (540NR) for the 2018 tax year. FTB accepted the return and treated it as a claim for refund in the amount of \$7,307.75, which it denied based on the expiration of the statute of limitations.
16. This timely appeal followed.
17. On appeal, appellant submits a letter from FTB's Executive and Advocate Services, stating that she is required to file returns for the 2017 and 2018 tax years because she owns property in San Diego, California.

DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) There is generally no reasonable cause or equitable basis to suspend the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

For members of the Armed Forces, Internal Revenue Code (IRC) section 7508(a)¹ provides the statute of limitations to file a claim for refund is tolled for the amount of time of service, if such service is either in a designated company zone or deployment outside the United States while participating in a contingency operation, plus 180 days.

On appeal, appellant asserts that she is entitled to a claim for refund. Appellant asserts that after filing her 2016 return, she received advice that she was no longer required to file in

¹ Incorporated by R&TC section 18571(a).

California because she is an active duty servicemember and nonresident.² Appellant contends that she is stationed outside of California and, at the time her account was garnished, she was out of the country. Appellant also makes reasonable cause arguments regarding a series of personal hardships including family illnesses.

Although appellant is a member of the Armed Forces, appellant does not contend, and the record does not support, that appellant was either serving in designated combat zone or deployed overseas. Thus, the statute of limitations is not tolled pursuant to IRC section 7508.

Appellant did not file timely returns for the 2017 and 2018 tax years. Thus, for the 2017 tax year, the statute of limitations began to run on the return's original due date and expired four years later on April 15, 2022. Similarly, for the 2018 tax year, the statute of limitations began to run on the return's original due date and expired four years later on April 15, 2023. Appellant filed her returns on August 26, 2024, which is after the four-year statute of limitations to file a claim for refund expired for both years. Therefore, FTB is barred by the four-year statute of limitations from refunding or crediting any overpayment for the 2017 and 2018 tax years.

The alternative one-year statute of limitations applies only to payments made within one year of the date the claim for refund is filed. (R&TC, § 19306(a).) Here, for the 2017 tax year appellant made payments on May 17, 2022, and July 5, 2022. For 2018, appellant made payments on July 5, 2022, and October 15, 2022. In each case, appellant's payments were made more than one year before appellant filed her claim for refund. Accordingly, appellant's claims for refund are barred by the one-year statute of limitations.

As discussed above, appellant's reasonable cause type arguments do not establish a basis to suspend the statute of limitations. To the extent that appellant's arguments allege financial disability, OTA notes that 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. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) On appeal, appellant has not provided a physician's affidavit or any other evidence of financial disability. Therefore, appellant has not met her burden of proof. As such, OTA finds that appellant's claims for refund are barred by the statute of limitations.

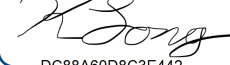
² Appellant does not provide any information or evidence to show that she received this advice. Nevertheless, and as discussed above, appellant's apparent reasonable cause type argument based on this advice does not establish a basis to suspend the statute of limitations.

HOLDING

Appellant's claims for refund are barred by the statute of limitations.


DISPOSITION

FTB's actions denying appellant's claims for refund for the 2017 and 2018 tax years are sustained.


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Keith T. Long
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Veronica I. Long
Administrative Law Judge

Date Issued: 9/24/2025