

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 240115134  
**G. REBISH (DEC'D)** )  
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**OPINION**

Representing the Parties:

For Appellant: Aaron Weiner, Tax Appeals Assistance Program

For Respondent: Andrea Watkins, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Rebish (dec'd) (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$2,744.72<sup>1</sup> for the 2018 tax year.

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**

Whether appellant's claim for refund for the 2018 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Appellant lived independently in San Francisco County until her death at age 72 on December 25, 2022.
2. Appellant was the settlor of a revocable trust last amended on May 15, 2012 (Trust), which, among other things designated her cousin S. Stieg as trustee (Trustee) in the event of appellant's death or incapacity. Trustee, who resided in the State of

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<sup>1</sup> Although appellant's Request for Appeal with the Office of Tax Appeals indicates a dollar amount at issue of \$2,745, respondent has acknowledged appellant's payment in the amount of \$15.34 was an overcollection that will be refunded. Consequently, the amount at issue here is \$2,729.38.

Washington, also served as appellant's agent under a durable power of attorney for health care purposes.

3. The Trustee filed this appeal and is represented by TAAP. For the 2018 tax year, respondent obtained information indicating appellant received income sufficient to create a filing requirement but had not filed a return.
4. On July 28, 2020, respondent sent appellant a Demand for Tax Return, but appellant did not respond.
5. On October 21, 2020, respondent estimated appellant's income based on information reported to respondent by third parties and issued a Notice of Proposed Assessment (NPA) in the amount of \$2,167.88, inclusive of penalties and interest.
6. Appellant did not file a return or protest the NPA. Appellant paid the 2018 tax year balance in full on December 14, 2020.
7. On January 25, 2021, respondent sent a tax due notice in the amount of \$15.34 which appellant promptly paid. On appeal, respondent states that this amount was overcollected and will be returned.
8. On December 12, 2022, appellant was admitted via ambulance to an emergency medical facility to attend to injuries resulting from a fall that had taken place two weeks prior. Trustee was notified of appellant's circumstances by the hospital as appellant's agent for health care purposes.
9. Discharge records note that appellant had difficulty feeding herself at least from the time of her injury in November of 2022. After being discharged to a care facility for recovery, appellant passed away on December 25, 2022.
10. When Trustee was notified of appellant's passing, Trustee traveled to appellant's residence to settle appellant's affairs and discovered appellant had failed to file her California Resident Income Tax Return for the 2018 tax year.
11. Trustee facilitated the filing of appellant's 2018 return on September 25, 2023.
12. Respondent accepted the 2018 return and treated the return as a claim for refund.
13. Upon receipt of appellant's 2018 federal income tax return, the Internal Revenue Service (IRS) issued a credit to appellant's account for the overpayment of her federal income tax liability.
14. By letter dated October 23, 2023, respondent informed appellant that although the 2018 return showed a \$2,744.72 overpayment, a credit or refund of that overpayment was barred by the statute of limitations.
15. From this denial of appellant's claim for refund, this timely appeal followed.

### DISCUSSION

R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides, in part, 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; (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 to show entitlement to a refund. (*Appeal of Cornbleth*, 2019-OTA-408P.)

The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth, supra.*) 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 the tax has been erroneously, illegally, wrongfully collected, or 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.*)

Here, there is no dispute that appellant untimely filed her 2018 return which was due on April 15, 2019. Consequently, the first limitations period does not apply. The second limitations period, expiring four years from the due date of the return expired on April 15, 2023. (See R&TC, §§ 18566, 19306.) Because appellant did not timely file her 2018 return, the filing of the return on September 25, 2023, was outside the second limitations period.

Under the one-year statute of limitations period, the deadline for appellant to file a claim for refund is one year from the date of the overpayment. Here, appellant made a payment on December 14, 2020. Appellant's claim for refund filed on September 25, 2023, which was more than one-year from the date of that payment, and falls outside the statute of limitations.

There is a narrow exception to the running of the statute of limitations for the return of payments that were the result of an *overcollection*. (*Appeal of Cornbleth, supra.*) An overcollection only occurs due to an involuntary collection action taken by respondent where the amount exceeds what is legally owed under the law and was the result of a clerical or mechanical error. (*Ibid.*) Appellant argues that respondent's NPA incorrectly included a withholding credit of \$96 rather than the correct withholding credit amount of \$1,284. However, this alleged error does not result from the records or actions of respondent at the time it issued the NPA but from appellant's later and untimely filed 2018 tax return. OTA finds appellant's payment in response to respondent's NPA was not an overcollection as that term is described in *Appeal of Cornbleth, supra*, and therefore subject to the limitation's periods in R&TC

section 19306(a). Accordingly, the amount at issue constitutes an overpayment of tax subject to the statute of limitations for making a refund claim.

The running of the statute of limitations under R&TC section 19306 may be suspended while an individual taxpayer is “financially disabled,” as defined in R&TC section 19316. An individual taxpayer is financially disabled if: (1) the taxpayer is unable to manage their financial affairs due to 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).) The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by respondent. (R&TC, § 19316(a).) Respondent’s Form 1564, Financially Disabled – Suspension of the Statute of Limitations, (Form 1564) requires either (1) an affidavit from a physician that indicates the nature and the duration of the taxpayer’s physical or mental impairment and states the physician’s opinion that the taxpayer was unable to manage their financial affairs, or (2) proof that the IRS determined the taxpayer was financially disabled.<sup>2</sup> The financial disability exception does not include any period of time after a taxpayer’s death, and equitable tolling for the period of time after appellant’s death is prohibited. (*Appeal of Fischer (Dec’d)* 2024-OTA-518P.)

Here, appellant argues the conditions for financial disability are satisfied as pursuant to discharge records from an emergency room visit in December of 2022, appellant had difficulty feeding herself at least from the time of her injury in November of 2022 which lasted throughout the time thereafter until her passing in December of 2022. In addition, when Trustee alleges to have examined appellant’s residence after appellant’s passing, Trustee discovered numerous financial and legal documents that had been prepared for appellant, but which were unexecuted, suggesting appellant’s incapacity had existed for at least a five-month period prior to her passing. Appellant contends that tolling the statute of limitations for this period of incapacity would make timely the filing of appellant’s claim for refund on September 25, 2023. Appellant also asserts that the IRS issued a credit for overpayment of taxes for 2018 and that the federal return was filed at the same time as the return at issue here, which indicates IRS relief for financial disability.

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<sup>2</sup> The IRS also requires a signed physician’s statement to prove financial disability under the federal counterpart to section 19316. (Rev. Proc. 99-21, 1999-1 C.B. 960; Internal Revenue Code, § 6511(h).)

Respondent raises two primary arguments: (1) appellant failed to submit an affidavit from a physician indicating the nature and duration of appellant's impairments that articulates the physician's opinion that the taxpayer was unable to manage her financial affairs as required by respondent's Form 1564; and (2) even if appellant suffered a period of incapacity, the Trust authorized the Trustee to act on behalf of appellant in the case of appellant's disability and therefore R&TC, § 19316(b)(2) proscribes relief for financial disability.

While appellant alleges facts suggesting the legitimate impairment of appellant during the final weeks and perhaps months of her life, R&TC, § 19316(b)(1) is explicit that the medical impairment be either terminal or "expected to last for a continuous period of not less than 12 months." Additionally, as required by respondent's Form 1564, there must be a physician's affidavit attesting to the nature and duration of appellant's impairments indicating the physician's opinion that the taxpayer was unable to manage their financial affairs. Even assuming appellant's allegations concerning her medical impairment are true, and that the records of the hospital satisfied the requirements of a physician's affidavit, there is no suggestion that appellant's financial disability was expected to last for a continuous period of not less than 12 months. Appellant's condition prior to her accident, which caused her emergency room visit, is at best conjecture. Appellant's cause of death from cardiac arrest and heart disease are not conditions standing alone that inexorably establish financial disability prior to her unfortunate accident a month before her passing.

Furthermore, while respondent's evidence indicates the IRS issued an adjustment to appellant's 2018 federal return account, there is no evidence suggesting the basis for the adjustment was for "financial disability." The IRS Account Transcript for appellant has an entry for transaction code 820, which indicates a manual transfer to another account, excess collections, or other destination.<sup>3</sup>

Based on the foregoing, OTA finds that appellant's claim for refund filed on September 25, 2023, is barred by the statute of limitations and appellant has failed to establish entitlement to a tolling of the statute of limitations due to financial disability.<sup>4</sup>

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<sup>3</sup> See IRS, Section 8A, Master File Codes: <https://www.irs.gov/pub/irs-6209/6209sec8amasterfilecodes.pdf>.

<sup>4</sup> OTA therefore does not need to address respondent's contention that the existence of a revocable trust designating a trustee on the death or incapacity of the settlor is sufficient to establish the existence of a person who is legally authorized to act on the settlor's behalf in financial matters under R&TC, § 19316(b)(2).

HOLDING

Appellant's claim for refund for the 2018 tax year is barred by the statute of limitations.

DISPOSITION

Respondent's action denying appellant's claim for refund is sustained in full.

Signed by:  
*Greg Turner*  
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Greg Turner  
Administrative Law Judge

We concur:  
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*Erica Parker*  
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Erica Parker  
Hearing Officer

Signed by:  
*Hans Famularo*  
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Hans Famularo  
Administrative Law Judge

Date Issued: 10/29/2025