

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
P. GLEASON) OTA Case No. 240917407
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OPINION

Representing the Parties:

For Appellant: Shahin Rahimi, Attorney

For Respondent: Paige Chang, Attorney

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant P. Gleason appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$14,736.40 for the 2017 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).¹

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

¹ OTA scheduled a virtual hearing for this matter at appellant’s request, but when OTA did not receive a response to the hearing notice, the matter was removed from the hearing calendar. (Cal. Code Regs., tit. 18, § 30209(a).)

FACTUAL FINDINGS

1. Respondent issued a Demand for Tax Return (Demand) to appellant after receiving information indicating that appellant had sufficient income to require the filing of a California income tax return for the 2017 tax year and no return had been filed.²
2. After no response was received from appellant by the due date indicated on the Demand, respondent issued a Notice of Proposed Assessment (NPA) in September 2019. The NPA used estimated income based on third party reporting to propose a tax liability of \$11,555, plus penalties, fees and interest, and reported no withholding, payments, or credits. Appellant did not protest or respond to the NPA, and the proposed assessment became due and collectible.
3. In late 2019 and into early 2020, respondent sent appellant notices of tax due and its intent to take collection action against appellant.
4. Respondent initiated collection action and began collecting payments starting in August 2020. Respondent continued its collection activity and received the last of the collection-related payments in October 2023.³ Respondent received one subsequent payment in the form of a transferred payment from appellant's 2023 tax year account in May 2024.
5. During the period of collection, respondent issued several notices to appellant, including three annual notices updating him on the status of his 2017 tax year account.
6. Appellant responded for the first time on April 3, 2024, in response to a collection status notice sent in November 2023 and provided a 2017 financial statement listing previously unreported cost bases for items of income reflected on respondent's NPA. On the statement, appellant circled the total amounts of proceeds and cost bases but provided no other information and did not sign the submission.
7. Appellant filed a California income tax return for the 2017 tax year on June 11, 2024, reporting a total tax of zero dollars.

² The Demand, issued in April 2019, was sent to appellant at an address in Carlsbad, California. Respondent sent subsequent correspondence to this address until it sent a notice of intent to offset federal payments in January 2021 to a Vista, California address. Respondent continued to use the Vista address until November 2023, at which point it used an address in San Diego, California. Appellant listed the San Diego address on his tax return filed in June 2024, discussed below, and on his request for appeal to OTA.

³ Respondent ultimately collected over 50 payments through its collection activity on appellant's 2017 tax year account. Respondent provided the list of payments as exhibit F on appeal. For the sake of brevity, that list will not be provided herein, and instead individual payments or aggregate amounts will be referenced in the discussion as relevant.

8. Respondent accepted the return, which it treated as a claim for refund, and transferred an overpayment amount of \$610.17 plus allowed interest from appellant's 2017 tax year account to his 2018 tax year account.
9. Respondent issued a letter to appellant informing him that he had a remaining \$14,736.40 overpayment on his 2017 tax year account, but that a refund or credit of that amount was barred by the statute of limitations.
10. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides 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 timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. The taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (Cal. Code Regs., tit. 18, § 30219 *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, appellant did not file a return within the extension period for filing a return following the original due date, so the first four-year statute of limitations does not apply. The second four-year statute of limitations expired four years from the due date of the return, i.e., April 15, 2022. (See R&TC, §§ 18566, 19306(a).) Appellant filed his claim for refund on June 11, 2024, which is untimely under the second four-year statute of limitations.

The third statute of limitations is the one-year statute of limitations. Any payments made within one year of the filing of the claim for refund on June 11, 2024,⁴ would be timely under this statute of limitations. Between June 11, 2023, and June 11, 2024, respondent received one payment through collection activity (on October 9, 2023) and transferred an overpayment from appellant's 2023 tax year account to the 2017 tax year account (on May 31, 2024). Respondent allowed appellant's refund claim as to these two payments and applied them with allowable interest as a credit to appellant's 2018 tax year account. All other payments were barred by the one-year and four-year statutes of limitation.

The language of R&TC section 19306 is explicit and must be strictly construed. (*Appeal of Fischer (Dec'd)*, 2024-OTA-518P.) Absent an exception, the untimely filing of a claim for any

⁴ Although appellant's April 3, 2024, submission provided some documentation of potential error in respondent's calculation of appellant's tax liability, showing a cost basis for items of income, this submission did not meet the requirements for a claim for refund. (See *Appeal of Reed*, 2021-OTA-326P [claims for refund must be signed by the taxpayer and state the specific grounds upon which it is based].)

reason bars a refund, even if it is later shown that the tax was not owed in the first place. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) Appellant contends that an exception applies here. R&TC section 19316 provides that the statute of limitations provided for in R&TC section 19306 shall be suspended for any period during which an individual is financially disabled. An individual is financially disabled if they are unable to manage their financial affairs by reason of a medically determinable physical or mental impairment that is terminal or expected to last for at least a year. (R&TC, § 19316(b)(1).)

Appellant asserts he met the definition of financially disabled due to his circumstances during the statute of limitations period. Appellant also contends that he was not aware of respondent's collection activity due to his financial disability.⁵ Appellant indicated that he would provide documentation to prove his financial disability but, despite being given the opportunity on appeal, no such documentation was provided.

R&TC section 19316(a) provides, "The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by the Franchise Tax Board." Respondent sets forth these requirements in FTB Form 1564, which requires, in part, a physician affidavit of physical or mental impairment. While appellant provides a general description of his situation which impacted his ability to manage his financial affairs during the relevant time period, he has not provided evidence of an impairment, including the required physician affidavit. Accordingly, appellant has not shown that the exception provided in R&TC section 19316 applies to toll the statute of limitations here.

⁵ Part of appellant's explanation for his financial disability suggests that he may have had difficulty receiving mail, such as respondent's notices. However, there are no contentions or indications that respondent failed to properly send each notice to the appropriate last-known address for appellant. (See R&TC, § 18416.)

HOLDING

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

DISPOSITION

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

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 11/10/2025