

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
A. LERTVANICH) OTA Case No. 250419174
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OPINION

Representing the Parties:

For Appellant: A. Lertvanich

For Respondent: Caitlin S. Russo, Senior Legal Analyst

For Office of Tax Appeals: Chloe Sin, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Lertvanich (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$20,082.64 for the 2019 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 2019 tax year is barred by the statute of limitations set forth in R&TC section 19306.

FACTUAL FINDINGS

1. Appellant did not timely file a 2019 California Income Tax Return (return).
2. FTB received information indicating that appellant had received income sufficient to prompt a filing requirement for the 2019 tax year. FTB issued appellant a Request for Tax Return (Request) dated August 17, 2021, for the 2019 tax year. However, FTB did not receive a response to the Request.
3. On November 5, 2021, FTB issued appellant a Notice of Proposed Assessment (NPA), which estimated appellant's taxable income based on information reported from multiple third-party sources. The NPA proposed a tax liability of \$14,360, a late filing penalty of

- \$3,590, and applicable interest. FTB mailed the NPA to appellant at an address in Arcadia, California, which matches the address that appellant reported on his 2018 return filed on April 15, 2021. FTB did not receive a timely protest to the NPA and it became final.
4. Thereafter, on January 31, 2022, March 16, 2022, and April 22, 2022, FTB issued correspondence to appellant notifying appellant of a balance due. These notices were also mailed to the same Arcadia address as the Request and the NPA.
 5. On August 5, 2022, appellant filed an untimely return for the 2020 tax year. On the return, appellant provided an address in Monterey Park, California. On August 19, 2022, FTB issued appellant a Notice of Intent to Offset Federal Payments for the 2019 tax year to appellant's Monterey Park address. On May 3, 2023, FTB issued appellant an Annual Notice of the tax year account balance due to the same address.
 6. FTB initiated collection actions for appellant's 2019 tax liability. On August 11, 2022, FTB transferred a payment credit of \$2,224.50 from appellant's 2020 tax year account and applied it to appellant's 2019 tax year account. FTB also collected payments of \$16,881.72 on August 16, 2023, and \$1,288.50 on October 11, 2023. On October 20, 2023, FTB received a Treasury offset payment of \$1,304.48, which satisfied the liability in full.
 7. On December 26, 2024, appellant filed a 2019 return reporting zero total tax. On the return, appellant revised his address once more to the Arcadia address. FTB accepted the return as filed and treated it as a claim for refund of \$20,082.64.
 8. On January 14, 2025, FTB denied appellant's claim for refund based on the expiration of the statute of limitations. FTB issued the denial to appellant at the Arcadia address.
 9. This timely appeal followed.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. R&TC section 19306(a) 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).)

The language of the statute of limitations must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statutory period. (*Appeal of Benemi*

Partners, L.P., 2020-OTA-144P.) A taxpayer's failure to file a claim for refund within the statute of limitations, for any reason, bars the taxpayer from later claiming a refund. (*Ibid.*) It is also well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) One does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*U.S. v. Boyle* (1985), *supra.*) Taxpayers have the burden of proving that claims for refund are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, there is no dispute that appellant failed to file a timely return for the 2019 tax year. Therefore, the four-year statute of limitations to file a claim for refund began to run on the return's original due date, April 15, 2020, and expired four years later, on April 15, 2024.¹ (See R&TC, § 19306(a).) Appellant filed the claim for refund on December 26, 2024. Thus, under R&TC section 19306(a), the four-year statute of limitations expired prior to appellant filing the claim for refund.

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).) Payments made through FTB's collection actions are deemed paid on the date of receipt. (See R&TC, § 19383.) Here, appellant's payments include: a transfer payment of \$2,224.50 which was credited on August 11, 2022; payments collected by FTB of \$16,881.72 on August 16, 2023, and \$1,288.50 on October 11, 2023; and a Treasury offset payment of \$1,304.48 collected on October 20, 2023. Appellant filed a claim for refund on December 26, 2024, which is more than one year after October 20, 2023, the latest payment date. Accordingly, the one-year statute of limitations expired before appellant filed his claim for refund.

On appeal, appellant contends that he did not receive notices issued by FTB. Here, R&TC section 18416(b) provides that any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address. Furthermore, the last known address shall be the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an

¹ Due to the COVID-19 pandemic, for the 2019 tax year, FTB granted taxpayers a filing extension until July 15, 2020, pursuant to R&TC section 18527. (<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>). However, despite this extension, the four-year statute of limitations period for the purpose of filing a claim for a refund still expired on April 15, 2024, because R&TC section 18527 does not grant FTB the authority to alter the statutorily prescribed filing deadlines set forth in R&TC section 18566. (*Appeal of Bannon*, 2023-OTA-096P.)

address it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).)

In this case, FTB mailed correspondence to appellant's Arcadia address during the period November 5, 2021, through April 22, 2022. The Arcadia address corresponds with the address on appellant's 2018 return, which was filed on April 15, 2021. Thereafter, appellant provided a different address (the Monterey Park address) on his 2020 return which was filed on August 5, 2022. FTB then issued correspondence to the address reflected on appellant's 2020 return during the period August 15, 2022, through May 3, 2023. Finally, appellant filed his 2019 return on December 26, 2024, again utilizing the Arcadia address and FTB issued its claim for refund denial to this address. Thus, the record shows that FTB issued its correspondence to appellant's last known address because the correspondence was issued to the address on appellant's most recently filed return.

Appellant also asserts that his claim for refund should be granted for equitable reasons. First, appellant contends that he relied on a CPA to timely file his return and the CPA failed to do so. Appellant asserts that he believed his 2019 return was filed because he paid a tax preparation fee and received a copy of the return from the CPA. Next, appellant asserts that his claim for refund should be granted because he was unable to focus on his tax duties due to his parents' illnesses and subsequent deaths. In support of these contentions, appellant provides the following: a copy of a 2019 tax return prepared by his CPA and its corresponding invoice; and copies of his parents' medical records, and copies of his parents' death certificates, indicating they passed away in 2022 and 2023 respectively.

With regard to appellant's contentions that he relied on a CPA and that he was unable to attend to tax matters due to a family illness, OTA notes that the law does not provide for a reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, *supra*; see also, *U.S. v. Boyle*, *supra*.) Neither ill health of a taxpayer, his family, nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Gillespie*, *supra*.)² Thus, appellant's assertions do not establish a

² OTA notes that there is a limited exception for financial disability. 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*, *supra*.) On appeal, appellant has not asserted financial disability, nor has he submitted an affidavit to show that he was financially disabled. Accordingly, OTA finds that this exception does not apply.

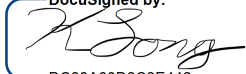
basis upon which the statute of limitations may be suspended. Therefore, the statute of limitations bars FTB from granting appellant’s claim for refund or credit for the 2019 tax year.

HOLDING

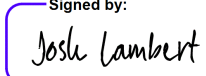
Appellant’s claim for refund for the 2019 tax year is barred by the statute of limitations set forth in R&TC section 19306.

DISPOSITION

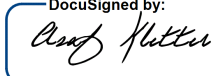
FTB’s action denying appellant’s claim for refund of \$20,082.64 for the 2019 tax year is sustained.

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Keith T. Long
Administrative Law Judge

We concur:
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Josh Lambert
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 12/18/2025