

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18011794
ERIC H. LILJESTRAND IRREVOCABLE)	Date Issued: January 18, 2019
TRUST)	
<hr/>)	

OPINION

Representing the Parties:

For Appellant: Alfred C.K. Chee, CPA

For Respondent: Brian Werking, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel IV

J. MARGOLIS, Administrative Law Judge: The Erick H. Liljestrand Irrevocable Trust (appellant) appeals the action taken by respondent Franchise Tax Board (FTB) in a determination letter dated September 15, 2016, with respect to appellant’s amended tax returns for 2005, 2006, 2007, 2008, 2009, and 2010 (the taxable years at issue). Appellant requests that FTB be required to “approve without qualification” appellant’s amended returns.

Appellant waived its right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether the Office of Tax Appeals (OTA) has subject matter jurisdiction to consider appellant’s request for relief and, if so, whether appellant is entitled to the relief requested.

FACTUAL FINDINGS

1. During the periods at issue, appellant was an irrevocable trust that was a partner in the Paul H. Liljestrand Partners Limited Partnership (the Partnership). The other partners were the Paul H. Liljestrand Revocable Living Trust (PHLRLT), three other irrevocable trusts, and a member of the Liljestrand family.

2. In 1997, PHLRLT contributed parcels of real property to the Partnership.
3. Paul H. Liljestrand (Dr. Liljestrand) died on May 31, 2004.
4. Upon the death of Dr. Liljestrand, PHLRLT became an irrevocable trust and a successor partner in the Partnership.
5. On August 31, 2005, the estate of Dr. Liljestrand filed its federal estate tax return, Form 706.
6. The Internal Revenue Service (IRS) audited the estate tax return and determined a deficiency in the estate's taxes.
7. The estate contested the IRS's audit determination before the U.S. Tax Court, which upheld the IRS's determination. (See *Estate of Paul H. Liljestrand, Deceased v. Commissioner*, T.C. Memo. 2011-259.)
8. The Partnership subsequently filed amended California information returns and issued amended California Schedules K-1 (FTB Forms 565) to its partners for the years 2004-2010 and 2012, purportedly to reflect the federal adjustments resulting from the estate tax return audit.
9. The FTB examined the amended partnership returns and, on June 29, 2016, issued a "no change" letter to the Partnership, stating that: "[o]ur examination of [the Partnership for 2004-2010 and 2012] resulted in no change to the reported net taxable income or loss." The letter also stated: "[t]his determination does not reflect a tax return audit adjustment of any other person or entity."
10. Appellant filed timely original fiduciary tax returns (FTB Forms 541) for the taxable years at issue. Years later, appellant filed amended fiduciary tax returns that purportedly are consistent with the Partnership's amended returns.¹ Appellant's amended returns for the 2005, 2006, 2007, 2008, 2009, and 2010 taxable years were filed on January 15, 2014, January 15, 2014, March 15, 2014, January 15, 2014, September 30, 2013, and January 15, 2014, respectively. Except for tax year 2009, Appellant's amended returns reported no overpayments and no change in the taxes it owed. Appellant's 2009 amended return reported an overpayment of tax, which FTB refunded.

¹ Appellant alleges that the Partnership's other partners also filed amended returns for those years. Those partners' tax liabilities, however, are not before us.

11. On September 15, 2016, the FTB wrote to appellant informing it of FTB’s “determination concerning the claims for refund and amended returns” filed for 2005-2010. In the letter, the FTB made several points. First, FTB concluded that appellant’s 2005-2007 amended returns would be treated as “regular amended returns” and not as claims for refund, because (i) they did not claim refunds, and (ii) even if they had, they were filed after the expiration of the statute of limitations for filing refund claims. Second, FTB concluded that appellant’s amended returns for 2008 and 2010 were filed within the statute of limitations for filing a claim for refund, but since those returns did not change appellant’s tax liability and did not request refunds, they were “regular amended returns” and not claims for refund. Third, for 2009, the only year for which appellant did request a refund, the FTB treated the amended return as a claim for refund and allowed the claim in full, refunding \$601 plus interest. FTB’s letter also advised appellant that if it disagreed with FTB’s determination, “your next course of action will be to file an appeal with the State Board of Equalization within 90 days from the date we mailed this notice.”
12. Appellant filed this appeal with the State Board of Equalization within 90 days from the date of FTB’s notice of determination.
13. FTB acknowledged in its Opening Brief that it had accepted appellant’s amended returns for the years at issue “as filed.”

DISCUSSION

OTA is an independent administrative tribunal whose jurisdiction to hear taxpayer appeals, like that of its predecessor (the State Board of Equalization),² is limited by its enabling legislation, Assembly Bill Nos. 102 and 131 (2017-2018 Reg. Sess.). “An administrative agency’s jurisdiction depends upon the provisions of the statute, or other act of delegation, from which its powers are derived; and it cannot validly act in excess of the limits of jurisdiction which have been conferred upon it.” (*Appeal of Schillace*, 95-SBE-005, Aug. 2, 1995.)³

² With certain exceptions not relevant to this appeal, the OTA “is the successor to, and is vested with, all of the duties, powers, and responsibilities of the State Board of Equalization necessary or appropriate to conduct appeals hearings.” (Gov. Code, § 15672(a).) The OTA has authority to “conduct all appeals hearings for those duties, powers and responsibilities transferred to the office pursuant to Section 15672.” (Gov. Code, § 15674(a)(1).)

³ Precedential decisions by the State Board of Equalization, indicated by “SBE” in the caption, are viewable on its website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

Where, as here, franchise and income tax matters are at issue, OTA's jurisdiction – like that of its predecessor – generally is limited to hearing appeals from an FTB determination denying a protest of a proposed tax deficiency, and from an FTB notice denying a taxpayer's tax refund claim.⁴ (Rev. & Tax. Code, §§ 19045 et seq., 19324, 19331; see also *Appeal of Schillace*, *supra*; *Appeal of Lewis*, 85-SBE-151, Dec. 3, 1985.)⁵

Appellant did not appeal from an FTB determination denying a protest from a proposed tax deficiency, or from an actual, or deemed, disallowance of a tax refund claim. Appellant's amended returns for 2005-2008 and 2010 were not claims for refund, in that they did not seek any refund of taxes that were paid by appellant. Appellant's amended return for 2009 was a claim for refund, but it was not disallowed. FTB paid the requested refund in full.

Quite simply, appellant's appeal letter and reply brief fail to raise any issue over which OTA has jurisdiction. Although appellant stated in its appeal letter that its beneficiary has "filed an amended return to claim the refund of overpaid taxes," appellant's beneficiary is a separate taxpayer from appellant. Any refund claims that may have been filed by appellant's beneficiary are not before us in this matter.

In its reply brief, appellant contended that FTB should be required to "accept[] and approve[]" appellant's amended returns "without qualification" and issue "a 'no change' letter approving the amended returns for the 2005, 2006, 2007, 2008 and 2010 tax years as filed." As explained above, however, we lack jurisdiction to grant such "relief."⁶

HOLDING

OTA has no subject matter jurisdiction over appellant's appeal.

⁴ Although there are various other matters over which the OTA may take jurisdiction, see California Code of Regulations, title 18, section 30103(a), they are not applicable here.

⁵ In situations where a refund claim has been filed and the FTB fails to issue a notice of claim denial, a taxpayer may consider the claim denied after six months and appeal the "deemed denial" to OTA. (Rev. & Tax. Code, § 19331.)

⁶ We do note, however, that FTB represented in its Opening Brief that it had accepted appellant's amended returns for the years at issue "as filed."

DISPOSITION

Appellant's appeal is dismissed for lack of subject matter jurisdiction.

DocuSigned by:
Jeffrey I. Margolis
5E9822FEBB1BA41B...
Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:
Nguyen Dang
4D465973FB44469...
Nguyen Dang
Administrative Law Judge