

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

In the Matter of the Appeal of:	)	OTA Case No. 18042708
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<b>HOA THAI VU</b>	)	Date Issued: January 30, 2019
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**OPINION**

Representing the Parties:

For Appellant: Hoa Thai Vu, Taxpayer

For Respondent: Matt Cappel, Tax Counsel

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Hoa Thai Vu (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund in the amount of \$6,155.86 for the 2008 tax year. This matter is being decided on the written record because appellant waived the right to an oral hearing.

**ISSUE**

Whether appellant’s claim for refund for the 2008 tax year was filed timely.

**FACTUAL FINDINGS**

- Appellant, a California resident, made mortgage interest payments during 2008, but did not timely file a tax return.
- On August 29, 2012, FTB issued appellant a Demand for Tax Return (Demand). When appellant failed to respond to the Demand, FTB estimated appellant’s income for the year. FTB thereafter issued a Notice of Proposed Assessment (NPA) for \$6,134 in taxes, \$3,067 in penalties, plus interest. Appellant did not protest the NPA and it went final (i.e., became due and payable) on February 22, 2013.
- FTB initiated collection actions, and imposed a collection cost recovery fee of \$170, a county lien fee of \$8, and a Treasury Offset Program fee of \$22 charged by the Internal

Revenue Service for intercepting appellant's federal tax refund. In total, FTB collected payments totaling \$9,724.22 from appellant.

4. On March 25, 2016, appellant filed a 2008 tax return reporting no income, no payments, no taxes due, no withholdings, and claiming a refund of \$0. Appellant separately attached a cover letter requesting a refund of any overpayments. FTB accepted appellant's tax filing and letter as a claim for refund for all amounts paid. FTB also determined appellant's return was sufficient to demonstrate he owed no taxes for 2008. As such, FTB deleted the \$6,134 in taxes and \$3,067 in penalties, and reduced appellant's remaining 2008 account liability to \$200, representing the costs incurred by FTB in collecting the tax liability. The \$200 amount represents the collection cost recovery fee (\$170), the county lien fee (\$8), and the Treasury Offset Program fee (\$22).
5. On January 9, 2017, FTB refunded \$3,433.10 to appellant, which is the total of all payments that were made on or after March 26, 2015 (i.e., during and after the 12-month period preceding March 25, 2016, the date appellant filed a 2008 tax return), plus applicable interest thereon in the amount of \$64.74. FTB did not refund any other payments.<sup>1</sup>
6. On October 25, 2017, appellant requested a refund of the additional payments in the amount of \$6,155.86, on the basis of reasonable cause. Appellant contends that he did not know about the 2008 tax liability assessed by FTB until FTB levied appellant's bank account, and this occurred because FTB erroneously assumed appellant earned income during 2008.
7. On November 11, 2017, FTB denied the balance of appellant's claim for refund in the amount of \$6,155.86, on the basis that appellant failed to establish reasonable cause. This amount represents the total of the remaining payments, \$6,355.86, less the \$200 in fees which appellant does not dispute.
8. On December 1, 2017, appellant timely appealed FTB's decision on the basis that appellant filed a return reporting no tax liability for 2008, which FTB accepted. In support, appellant contends that FTB levied the amount at issue, \$6,155.86, from appellant's bank account.

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<sup>1</sup> The payments that were refunded are: \$0.55 on 5/3/2016, \$3,340.00 on 4/27/2016, \$3.24 on 10/28/2015, and \$24.57 on 4/15/2015. The payments that were not refunded are: \$0.72 on 10/7/2014, \$949.51 on 8/15/2014, and \$5,405.63 on 6/15/2014.

## DISCUSSION

As a general matter, when it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law or Corporation Tax Law, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, §§ 19301, 19302.) The law imposes time limits and other requirements on making and filing a claim for refund of taxes paid. (See R&TC, §§ 19306-19322.1.) Every claim for refund shall be in writing, signed by the taxpayer or the taxpayer's authorized representative, and state the specific grounds upon which it is founded. (R&TC, § 19322.)

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, 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 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.) Under certain circumstances, a return filed within the statute of limitations period described above, which shows a credit for tax withholdings or estimated tax payments, may be treated as a timely refund claim for the excess amount. (R&TC, § 19307.)

It is well-settled at the federal level that a claim for refund must be filed within the time period authorized by statute and, as such, there is no equitable tolling of the statute of limitations. (*Cooper v. Commissioner* (2013) 718 F.3d 216 [citing the "settled rule" established by *United States v. Brockamp*, (1997) 519 U.S. 347].) Considering the mandatory language of R&TC section 19306, absent a grant of statutory authority, we similarly have no basis to grant a refund outside the statute of limitations. (R&TC, § 19306; *Appeal of Cervantes*, 74-SBE-029, Aug. 1,

1974.)<sup>2</sup> Although there are some statutory exceptions, the law provides no basis to extend the statute of limitations for reasonable cause.<sup>3</sup> (R&TC, § 19306.)

In the instant case, appellant's claim for refund was filed on March 25, 2016, which is more than four years after the April 15, 2009, due date to timely file a 2008 tax return. Therefore, appellant's refund claim is untimely as to any payments made more than 12-months prior to March 25, 2016, the date of the refund claim. This means that appellant's refund claim is untimely as to any payments made prior to March 26, 2015. FTB refunded all payments made on or after March 26, 2015. Although appellant contends, and FTB does not dispute, that appellant overpaid \$6,155.86 to the state, the statute of limitations operates as a bar to refunding a payment regardless of the substantive merits of a taxpayer's underlying claim. Therefore, we have no statutory authority to grant appellant's refund claim with respect to the \$6,155.86 in payments made prior to March 26, 2015, because they fall outside the mandatory timeframe authorized by the Legislature to file a claim for refund therefore.

HOLDING

Appellant failed to file a timely claim for refund.

DISPOSITION

FTB's action for the 2008 tax year is sustained, and the refund claim is denied.

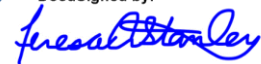
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Andrew J. Kwee  
Administrative Law Judge


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<sup>2</sup> Precedential opinions of the Board of Equalization (board) may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. The board's precedential opinions are viewable on its website: <[www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm)>.

<sup>3</sup> As one exception, for purposes of the Personal Income Tax Law, the statute of limitations may be tolled under certain circumstances during any period for which an individual taxpayer establishes a financial disability, which means that the taxpayer 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.) Appellant has not alleged or offered any evidence of a financial disability as a basis for tolling the statute of limitations.

We concur:

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Teresa A. Stanley  
Administrative Law Judge

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Alberto T. Rosas  
Administrative Law Judge