

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011066
JAMIE R. HOOVER)
) Date Issued: March 19, 2019
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OPINION

Representing the Parties:

For Appellant: Lisa Powers, CPA
For Respondent: Samantha Q. Nguyen, Tax Counsel
Craig Scott, Tax Counsel IV
Nancy Parker, Tax Counsel IV

For the Office of Tax Appeals: Tom Hudson, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jamie R. Hoover (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of interest on overpayments for tax years 2001 through 2006.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Jeffrey I. Margolis, and Andrew J. Kwee, held an oral hearing for this matter in Sacramento, California, on December 18, 2018. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Is appellant entitled to interest on overpayments for taxable years 2001 through 2006, inclusive, from the dates of appellant’s payments until the dates appellant filed his tax returns?

FACTUAL FINDINGS

1. Appellant failed to timely file California returns for each of the years 2001 through 2006. For those years, FTB received information indicating that appellant was required to file

- California income tax returns. For each of those years, FTB estimated appellant's income based on its records, issued a Notice of Proposed Assessment (NPA), and took collection action after each proposed assessment became final. FTB collected the tax, penalties, and interest determined to be due for each year.
2. In 2008 and 2009, appellant late-filed his original California returns for the years at issue. In 2010, appellant filed amended California returns for each of the years at issue, reporting reduced tax liabilities.
 3. FTB audited the amended returns, allowed claimed deductions and credits, and reduced appellant's tax liabilities, penalties, and interest accordingly.
 4. On December 16, 2015, appellant requested abatement of all the penalties and fees imposed by FTB, based on an Internal Revenue Service (IRS) final determination that appellant had been financially disabled during taxable years 2001 through 2008.¹
 5. FTB accepted the IRS financial disability determination and abated all the penalties and fees charged to and collected from appellant, and refunded those amounts with interest beginning from the dates appellant filed his original returns.
 6. In a letter dated September 6, 2016, FTB denied appellant's request that FTB pay interest on refunded amounts for the period prior to the dates appellant filed his original tax returns (going back to the dates of appellant's overpayments).
 7. This timely appeal followed.

DISCUSSION

R&TC section 19340 provides that, in the case of an overpayment, interest shall be paid beginning on the date of the overpayment. (R&TC, §19340(b).) However, R&TC section 19341(d) states that “[i]n the case of a return of tax which is filed after the last date prescribed for filing the return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.”

Appellant argues that because the IRS and FTB have determined that appellant was financially disabled within the meaning Internal Revenue Code (IRC) section 6511(h) and R&TC section 19316, respectively, his returns should be treated as if they had not been “filed

¹ The evidence presented shows that appellant was deemed financially disabled pursuant to Internal Revenue Code section 6511(h) and IRS Revenue Procedure 99-21 for 2005; however, the parties appear to agree that appellant qualified as financially disabled for 2001 through 2008, inclusive.

after the last date prescribed for filing the return[s]” within the meaning of R&TC section 19341. We disagree.

The financial disability provisions of R&TC section 19316 suspend the running of specified statutes of limitation, those relating to filing claims for tax refunds (R&TC, §§ 19306, 19308, 19311, 19312, and 19313). They do not change “the last date prescribed for filing the return.” The statute prescribing the last date for filing the return is R&TC section 18566, which is unaffected by the financial disability provision.²

Appellant also argues that FTB should allow additional interest in order to be consistent with the action taken by the IRS for the years at issue. However, appellant admitted in his reply brief that the IRS had not paid him any refund interest for the years 2001 through 2005. With respect to his 2006 tax year, it is unclear exactly what the IRS did. Appellant claimed in his reply brief that the IRS “netted” the amount of his federal overpayment for 2006 against a balance he owed for 2005. However, even if appellant had established that the IRS had paid him interest on his 2006 overpayment for the contested period (which he has not), the plain language of R&TC section 19341(d) still would apply and bar FTB from refunding interest for the period prior to the date appellant filed his original returns.

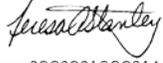
HOLDING

Appellant has not established that he is entitled to receive interest for the periods prior to the dates his returns were late-filed with FTB.

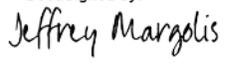
² This appeal does not present a situation where a taxpayer was not obligated to file a tax return, but filed after the normally applicable return due date to claim refunds of overpaid amounts. In those situations, courts have held the prohibition against paying interest for the period prior to the date the return was filed does not apply. (See, e.g., *MNOPF Trustees, Ltd. v. United States* (Fed.Cir. 1997) 123 F.3d 1460 [holding IRC § 6611(b)(3), the federal analog to R&TC § 19341(d), did not apply]; *Overseas Thread Industries, Ltd. v. United States* (Fed.Cl. 2000) 48 Fed.Cl. 221 [late return interest prohibition inapplicable because there was no requirement to file a tax return].)

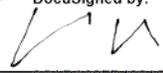
DISPOSITION

FTB's denial of appellant's claim for additional interest is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Jeffrey I. Margolis
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge