

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
IBRAHIM GH AIS

) OTA Case No. 19034408
)
) Date Issued: December 11, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Ibrahim Ghais, Taxpayer

For Respondent: David Muradyan, Tax Counsel III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324, Ibrahim Ghais (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$10,245.59 for the 2005 tax year.¹ This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether appellant timely filed a claim for refund for the 2005 tax year.

FACTUAL FINDINGS

1. Appellant resided and worked in California during 2003 and part of 2004.
2. Appellant moved from California to Maryland during 2004. Around this time, appellant arranged to have his mail forwarded to an address in Lake Forest, California.
3. Appellant filed a 2005 Federal income tax return reporting the Lake Forest, California, address as appellant’s mailing address. Appellant did not file a 2005 California income tax return.
4. On January 6, 2009, FTB issued a demand letter to appellant to file a 2005 tax return by February 11, 2009. Appellant failed to respond to the demand letter.

¹ On appeal, FTB agrees to abate and refund the demand penalty of \$1,269.25.

5. On March 16, 2009, FTB issued appellant a Notice of Proposed Assessment (NPA) for \$5,077 in tax, interest, a failure-to-file penalty, and a demand penalty for the 2005 tax year.
6. On August 19, 2009, FTB issued a notice and demand for payment of the 2005 liability.
7. On October 22, 2009, FTB issued a final notice and demand for payment, notifying appellant that it would pursue collection actions if the liability was not paid.²
8. FTB issued a withholdings order in the amount of \$9,781.02 to appellant's bank on November 25, 2009. The order directed the bank to notify appellant that the funds were being withheld pursuant to the order.
9. Appellant's bank withdrew \$7,427.26 from his account pursuant to the order on December 14, 2009, and remitted it to FTB on December 23, 2009.
10. On December 19, 2009, appellant printed out the details of the \$7,427.26 levy from his bank account. At some point thereafter, appellant added handwritten notes to the printout, noting that the withdrawal was for State of California taxes for 2005, in the amount of \$9,781.03, the agency check number for the payment, a phone number to contact, and the levy number. The levy reduced his bank account balance to \$0.00.
11. During 2016, appellant submitted a property claim to the California State Controller's Office (SCO), claiming that property in the amount of \$2,998.33, and reported by that agency as being unclaimed, belonged to appellant. SCO approved appellant's property claim. Thereafter, SCO remitted the amount to FTB on November 23, 2016. FTB applied the payment to appellant's 2005 liability.
12. By letter dated November 28, 2016, SCO notified appellant that FTB intercepted appellant's unclaimed property payment in the amount of \$2,998.33. SCO provided a mailing address and phone number for appellant to contact FTB.
13. On October 30, 2018, appellant filed a claim for refund with FTB for the \$7,427.26 bank levy and the \$2,998.33 that FTB intercepted from SCO on the basis that he did not have a filing requirement in California.
14. By Notice of Action dated December 18, 2018, FTB denied the claim as untimely.
15. Appellant timely appealed FTB's action. In support, appellant submitted a copy of a wage statement reflecting a Maryland address for 2004 and 2005, a copy of his bank

² FTB mailed the demand letter, NPA, and both payment notices to the Lake Forest, California address.

account showing the \$7,247.26 levy (which was printed out on December 19, 2009), and a copy of the November 28, 2016 letter from SCO regarding the \$2,998.33 payment.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in Revenue and Taxation Code 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 a 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. (Rev. & Tax Code, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Barbara D. Gillespie* (2018-OTA-052P).)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no legislative intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Michael and Antha L. Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Earl and Marion Matthiessen* (85-SBE-077) 1985 WL 15856; *United States v. Dalm* (1990) 494 U.S. 596.)

Here, appellant had timely and actual notice that FTB levied his bank account on December 23, 2009, and that SCO remitted his property to FTB on November 23, 2016, both in satisfaction of his 2005 tax liabilities. Nevertheless, appellant waited seven years after the bank levy, and two years after FTB intercepted his funds from SCO, to file his October 30, 2018 claim for refund. Under the facts of this case, the statute of limitations to claim a refund for the \$7,247.26 bank levy expired on December 23, 2009, and appellant similarly had one year, until November 23, 2017, to claim a refund for the \$2,998.33 that FTB intercepted from SCO.

Appellant separately asks for a refund of his entire 2005 liability, using FTB's rationale to refund the demand penalty: the statute of limitations does not apply to certain erroneous over-collections.³ Here, appellant contends that the statute of limitations is inapplicable because this amount was never owed to the State of California and that, therefore, there was an erroneous

³ See FTB Technical Advice Memorandum 2007-01: <<https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2007-01.pdf>>.

over-collection within the meaning of FTB's Technical Advice Memorandum 2007-01. We disagree. FTB has the authority to make a proposed assessment when it determines that a return has not been filed and tax is due. (Rev. & Tax. Code, § 19087(a).) If no protest is filed, the amount of the proposed assessment becomes final 60 days after FTB mails notice of the proposed assessment to the taxpayer. (Rev. & Tax. Code, § 19042.) Thereafter, FTB may mail notice and demand to the taxpayer for payment of the liability, and the assessment is due and payable at the expiration of 15 days from the date of the notice and demand. (Rev. & Tax. Code, § 19049.) Such amounts are perfected and enforceable state tax liens. (Rev. & Tax. Code, § 19221.) Here, FTB properly mailed the NPA, and the notice and demand, to the address appellant reported on his 2005 federal income tax return. (See Rev. & Tax. Code, § 18416.) Nevertheless, appellant failed to respond to the NPA, or pay the liability in response to the demand for payment. As such, the 2005 tax year liability was final, collectible, and legally due and payable. FTB collected the proper amount as assessed for 2005. Under such facts, we find there was no erroneous over-collection from appellant.⁴

In conclusion, we find that appellant's claim is barred by statute and we have no basis to address the substantive merits of his claim or otherwise refund the money.

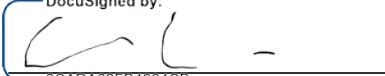
⁴ Based on our finding that the liability was properly imposed and collected, we need not address whether, or to what extent, the statute of limitations applies in the context of an erroneous over-collection (see footnote 3). We also offer no finding or analysis with respect to the demand penalty because it is not at issue in this appeal.

HOLDING

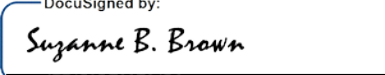
Appellant’s claim for refund for the 2005 tax year is untimely.


DISPOSITION

We sustain FTB’s denial of appellant’s claim for refund for 2005, subject to FTB’s concession to refund the demand penalty.

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:

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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:

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Jeffrey I. Margolis
Administrative Law Judge