

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

In the Matter of the Appeal of:  
**S. MONAHAN**

) OTA Case No. 19064859  
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**OPINION**

Representing the Parties:

For Appellant: Michael W. Monahan

For Respondent: Eric R. Brown, Tax Counsel III

R.TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Monahan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,467.85<sup>1</sup> for the 2011 tax year.

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

**ISSUE**

Whether appellant has shown that FTB erred in denying her claim for refund for the 2011 tax year.

**FACTUAL FINDINGS**

1. Appellant did not file a 2011 California income tax return. Consequently, in 2013, FTB issued to appellant a Notice of Proposed Assessment (NPA), estimating her taxable income and resulting tax due, plus a late-filing penalty and applicable interest. The NPA went final after appellant failed to file a timely protest. Because appellant had not paid the amounts due in the NPA, FTB initiated involuntary collection action.

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<sup>1</sup> Appellant’s payments and credits for 2011 totaled \$3,164.72. FTB added \$7.77 of interest on the overpayment and refunded \$1,677.34. On appeal, FTB conceded the \$27.30 non-sufficient funds fee for the returned check. Thus, the remaining amount on appeal is \$1,467.85 (\$3,164.72 + \$7.77 - \$1,677.34 - \$27.30).

2. In April 2015, appellant contacted FTB to set up a payment plan for the amount due for 2011. On April 21, 2015, FTB sent appellant a notice approving the payment plan, which established payments of \$150 per month. Appellant made payments from October 2015 to November 2018 in various amounts toward the satisfaction of her outstanding balance for 2011. Additionally, FTB applied overpayments from other tax years to her 2011 account. Altogether, appellant's payments and FTB's credits from other tax years totaled \$3,164.72. Of those payments and credits, appellant paid \$1,467.85 prior to October 15, 2017.
3. On October 15, 2018, appellant untimely filed a 2011 California income tax return, reporting no taxable income. FTB accepted appellant's tax return as filed, abated the tax and late-filing penalty in the NPA, and issued a refund of \$1,677.34.<sup>2</sup>
4. Appellant filed four additional claims for refund from January 2019 through February 2019. Appellant requested refunds for the remaining overpayments for her 2011 tax year. FTB denied her claims for refund in a letter dated March 6, 2019.<sup>3</sup> This timely appeal follows.

### DISCUSSION

R&TC section 19306(a) sets forth the statute of limitations for timely filing a claim for refund. A taxpayer must file a claim for refund before the end of one of the following time periods, whichever ends later: (1) four years from the date the return was timely filed; (2) four years from the date the return was due (without regard to extension), if the return was filed untimely; or (3) one year from the date of the overpayment. In an action for refund, the taxpayer has the burden of proving entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) If the one-year statute of limitations applies and tax assessments are paid in installments over a period of time, payments made more than one year from when the refund claim is filed will be barred by the statute of limitations, even though they arose from the same liability or claim year. (*Appeal of Sasser* (63-SBE-126) 1963 WL 1732).

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<sup>2</sup>The refund amount is equal to \$1,696.87, the amount appellant paid or FTB credited to appellant's account after October 15, 2017 (one year prior to the day she filed her 2011 tax return), plus \$7.77, which FTB credited appellant as interest on the overpayment, and minus \$27.30 for the non-sufficient funds fee.

<sup>3</sup>To the extent FTB did not address the amount of appellant's claim for refund in its denial letter, Office of Tax Appeals accepts appellant's disputed amount on the basis of a deemed denial.

Here, it is undisputed that appellant did not file a timely 2011 California income tax return. Appellant filed her untimely 2011 California income tax return on October 15, 2018, which was more than four years past the original due date of April 15, 2012. Consequently, the applicable period of time within which to file a timely claim for refund for 2011 is one year from the date of appellant's overpayments.

It is also undisputed that appellant's overpayments were in the form of installment payments and credits from other tax years that FTB applied to satisfy her 2011 outstanding balance. Since appellant filed her 2011 California income tax return on October 15, 2018, which was treated as her earliest claim for refund by FTB, under the one-year statute of limitations in R&TC section 19306, her 2011 income tax return would have been a timely claim for refund only of overpayments made on or after October 15, 2017. Thus, a refund of appellant's payments made prior to October 15, 2017, in the amount of \$1,467.85, is not allowable due to the expiration of the one-year statute of limitations. Moreover, since FTB already refunded appellant \$1,677.34 (the amount of appellant's payments/credits applied on or after October 15, 2017), appellant is not entitled to an additional refund.

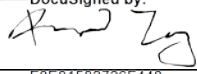
On appeal, appellant argues that R&TC section 19306 should be applied to extend the statute of limitations such that the late filing of her 2011 tax return would constitute a timely claim for refund for all her 2011 tax payments. However, nothing in the statutory language of R&TC section 19306 permits a tolling of the statute of limitations, as alleged by appellant. Appellant provides no other legal or factual basis to support her position. Thus, appellant has not met her burden of proof to show that her claim for refund of an additional \$1,467.85 should be allowed.

HOLDING


Appellant has not shown that FTB erred in denying her claim for refund for the 2011 tax year.


DISPOSITION

The imposition of the \$27.30 non-sufficient funds fee was improperly imposed, consistent with FTB’s concession noted above. In other respects, we sustain FTB’s action denying appellant’s claim for refund.

DocuSigned by:  
  
FBE81582726F448  
Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
FD75A3136CB34C2  
Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
  
8B585BFAC08946D  
Linda C. Cheng  
Administrative Law Judge

Date Issued: 3/4/2020