**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | ) OTA Case No. 20086517 |
| **S. MANSOIR** | ) |
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# OPINION

Representing the Parties:

For Appellant: S. Mansoir

For Respondent: Jean M. Cramer, Tax Counsel IV

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Mansoir (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant's claim for refund of $6,213.59 for the 2013 tax year.

We decide this matter based on the written record because appellant waived the right to an oral hearing.

## ISSUE

Whether appellant is entitled to tax abatement based on erroneous information provided by respondent.

## FACTUAL FINDINGS

1. Appellant failed to report a $53,587 taxable early IRA distribution for the 2013 tax year.
2. Upon discovering this omission, the Internal Revenue Service (IRS) adjusted appellant's federal return to account for this unreported income and imposed an early distribution tax.
3. The IRS notified respondent of these changes, and based on these federal changes, respondent issued a Notice of Proposed Assessment (NPA) to appellant. The NPA included appellant's taxable IRA distribution in income and made other corresponding adjustments, but inadvertently failed to include an early distribution tax. Appellant did not protest this NPA and it became final.

4. Respondent thereafter issued a second NPA to appellant which included an early distribution tax and an accuracy-related penalty. However, this NPA introduced another error, by including appellant's taxable IRA distribution in income, twice.
5. Appellant protested the second NPA informing respondent of this double counting error.
6. On August 27, 2018, respondent issued a Notice of Action (NOA) correcting the double counting error. The NOA did not show the additional tax previously included in the first NPA.
7. On August 28, 2018, prior to receiving the NOA, appellant contacted respondent via telephone regarding a billing notice issued for the first NPA. Respondent erroneously informed appellant to disregard the amount shown on that notice, stating that appellant should receive a revised billing statement (i.e., the NOA) soon.
8. On December 5, 2018, respondent sent appellant a letter explaining that it had provided appellant inaccurate information in response to appellant's August 28, 2015 inquiry, and that the revised amount shown on the NOA pertained only to the second NPA.
9. In recognition of its error, respondent abated unpaid interest for the period August 28, 2018, through December 5, 2018.
10. Appellant paid both NPAs, and on July 27, 2020, filed a refund claim for the amount appellant paid toward the first NPA.[1]

[1] We need not address appellant's lengthy payment history and the timeliness of appellant's refund claim with respect to those payments because we find below that this claim should be denied on the merits.

## DISCUSSION

Appellant does not contest respondent's determination of appellant's tax liability nor any of the relevant facts in the record. Appellant's only contention is that, pursuant to R&TC section 19104, appellant should be relieved of the liability stated in the first NPA (i.e., the additional tax due on appellant's early IRA withdrawal) because on August 28, 2018, appellant was misled by respondent into believing that appellant no longer owed that liability.[2]

R&TC section 19104(a)(1) is an *interest* relief provision which authorizes respondent to abate only interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee acting in an official capacity in performing a ministerial or managerial act. As noted above, respondent concedes it misinformed appellant as to the liability stated on the first NPA and has since granted interest relief for the period during which appellant was misinformed. In other words, respondent has already provided appellant with the full measure of relief available under this statute. R&TC section 19104 does not authorize tax abatement in this (or any other) situation, nor is there any statutory provision for abating the tax based on respondent's oral misrepresentation. Quite simply, there is no legal basis for abating the tax under these facts.[3]

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[2] Appellant alleges respondent committed other "critical errors" causing appellant "financial loss and undue hardship." However, we lack the authority to address these concerns. (Cal. Code Regs., tit. 18, § 30104(d) [the Office of Tax Appeals lacks jurisdiction to determine whether an appellant is entitled to a remedy for respondent's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal]; see also *Appeals of Dauberger*, *et al*. (82-SBE-082) 1982 WL 11759) ["We have no power to remedy any other real or imagined wrongs that taxpayers believe they may have suffered at the hands of the Franchise Tax Board"].)

[3] Although not expressly raised by appellant, to the extent appellant's position implicates the common law doctrine of equitable estoppel, we find this doctrine to be inapplicable here. As applied to tax disputes, equitable estoppel is an affirmative defense asserted for purposes of preventing the government from assessing or collecting the tax owed on the basis that the taxpayer detrimentally relied upon the inaccurate representations of the government or its representatives. (See, e.g., *U.S. Fidelity & Guaranty Co. v. State Bd. of Equalization* (1956) 47 Cal.2d 384.) Although the government may be estopped in tax matters, "it is the unusual case in which estoppel will be applied in tax cases; the case must be clear and the injustice great …." (*Id*. at p. 389.) Generally, a taxing agency is not estopped by the erroneous misrepresentations of an administrative official. (See *id*. at pp. 389-390.) We find this principle to be applicable here, thus precluding respondent from being estopped in this case.

## HOLDING

Appellant is not entitled to tax abatement.

## DISPOSITION

We sustain respondent's action denying appellant's refund claim.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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E. S. Ewing
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Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 6/23/2021