

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

In the Matter of the Appeal of:  
**T. CLARKE**

) OTA Case No. 21088337  
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**OPINION**

Representing the Parties:

For Appellant: Steve Fuqua, EA

For Respondent: Noel Garcia, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Clarke (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s request to apply overpayments from the 2008, 2009, 2010, 2011, and 2013 tax years (collectively, the tax years at issue) to the 2012, 2014, 2015, 2016, 2017, 2018, and 2019 tax years (collectively, the succeeding tax years).

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

**ISSUE**

Whether the statute of limitations bars appellant’s requested application of overpayments from the tax years at issue to the succeeding tax years.

**FACTUAL FINDINGS**

1. FTB received information that appellant had a filing requirement but had not filed his California Resident Income Tax Return for the tax years at issue.

2008 Tax Year

2. On April 12, 2010, FTB issued a Notice of Proposed Assessment (NPA) for the 2008 tax year, estimating appellant's taxable income from third-party sources. Appellant did not respond to the 2008 NPA, and the proposed liability became final.
3. FTB commenced collection actions. On January 27, 2011, FTB received payment through a levy on appellant's bank account.
4. On June 8, 2020, appellant filed his 2008 California Resident Income Tax Return, reporting total tax of \$981.00. FTB accepted appellant's 2008 return, and based on the amount FTB collected through the levy, determined that appellant overpaid his liabilities by \$5,338.91.<sup>1</sup>

2009 Tax Year

5. On February 28, 2011, FTB issued an NPA for the 2009 tax year, estimating appellant's taxable income from third-party sources. Appellant did not respond to the 2009 NPA, and the proposed liability became final.
6. FTB commenced collection actions. On December 2, 2011, FTB received payment through a levy on appellant's bank account.
7. On June 8, 2020, appellant filed his 2009 California Resident Income Tax Return, reporting zero total tax for the 2009 tax year. FTB accepted appellant's 2009 return, and based on the amount FTB collected through the levy, determined that appellant overpaid his liabilities by \$7,850.23.

2010 Tax Year

8. On April 16, 2012, FTB issued an NPA for the 2010 tax year, estimating appellant's taxable income from third-party sources. Appellant did not respond to the 2010 NPA, and the proposed liability became final.
9. FTB commenced collection actions. On May 15, 2013, FTB received payment through a levy on appellant's bank account.

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<sup>1</sup> We note that for the tax years at issue, the overpayment amounts were caused by the difference between: (1) the amounts FTB collected from its involuntary collection actions for the specific tax year in dispute; and (2) the liabilities appellant owed for that specific tax year, which consisted of principal tax, applicable penalties, collection cost recovery fees, and applicable interest. (See R&TC, § 19301.)

10. On June 8, 2020, appellant filed his 2010 California Resident Income Tax Return, reporting total tax of \$145.00. FTB accepted appellant's 2010 return, and based on the amount FTB collected through the levy, determined that appellant overpaid his liabilities by \$7,232.31.

#### 2011 Tax Year

11. On April 15, 2013, FTB issued an NPA for the 2011 tax year, estimating appellant's taxable income from third-party sources. Appellant did not respond to the 2011 NPA, and the proposed liability became final.
12. FTB commenced collection actions. On June 7, 2014, FTB received payment through a levy on appellant's bank account.
13. On June 8, 2020, appellant filed his 2011 California Resident Income Tax Return, reporting total tax of \$2,168.00. FTB accepted appellant's 2011 return, and based on the amount FTB collected through the levy, determined that appellant overpaid his liabilities by \$1,171.97.

#### 2013 Tax Year

14. On March 30, 2015, FTB issued an NPA for the 2013 tax year, estimating appellant's taxable income from third-party sources. Appellant did not respond to the 2013 tax year NPA, and the proposed liability became final.
15. FTB commenced collection actions. On December 11, 2015, FTB received payment through a levy on appellant's bank account.
16. On June 8, 2020, appellant filed his 2013 California Resident Income Tax Return, reporting total tax of \$1,784.00. FTB accepted appellant's 2013 return, and based on the amount FTB collected through the levy, determined that appellant overpaid his liabilities by \$3,321.67.

#### Claims for Credit

17. On October 5, 2020, appellant filed a claim requesting FTB to apply the overpayments from the tax years at issue to the current balances owed for the succeeding tax years.
18. On August 3, 2021, FTB denied appellant's claim for credit or refund of overpayments. This timely appeal followed.

## DISCUSSION

R&TC section 19306(a), provides, in part, that no credit or refund shall be allowed after a period ending: (1) four years from the date the return was filed (if filed within the extended filing period); (2) four years from the last date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment, whichever is later, unless before the expiration of the period, the taxpayer files a claim for refund or credit. As such, appellant must timely claim any overpayments within the later of the three different time periods described above. R&TC section 19306 explicitly defines the statute of limitations, and its language must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.)

There are no exceptions to tolling the statute of limitations; the statute of limitations may not be tolled based on equity or for reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA- 144P.) Even if the taxpayer shows that he or she did not actually owe the tax paid, the taxpayer is barred from receiving a refund if the statute of limitations has elapsed. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Federal courts have held that fixed deadlines may appear harsh because they can be missed by a single day or even a single hour, but the resulting occasional harshness is redeemed by the clarity they give to the legal obligation. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Here, it is undisputed that appellant filed his claim for the tax years at issue after the expiration of the statute of limitations. Rather, appellant's sole argument on appeal is that the overpayments are the result of involuntary bank levies initiated by FTB. Appellant asserts that had he voluntarily paid the balances due, there would not have been any overpaid amounts. However, for purposes of applying the statute of limitations for overpayments, it does not matter that appellant's overpayments are the result of FTB's involuntary collection actions as opposed to appellant's own voluntary actions. Instead, appellant needs to file his claim for refund or credit within the applicable statute of limitations. Here, the latest of the three statute of limitations periods is four years from the last date prescribed for filing the return (determined without regard to any extension of time for filing the return).<sup>2</sup> This means that appellant's claims

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<sup>2</sup> As reiterated, R&TC section 19306 provides that appellant's claim for refund must have been filed within the later of three different time periods to be within the statute of limitations. The first time period is only applicable if appellant timely filed his California Resident Income Tax Return, as such the first time period is not applicable because the tax returns for tax years at issue were all not timely filed. The second time period is four years from the

for the tax years at issue needed to be filed on April 15, 2013, (for the earliest, 2008, tax year at issue) and April 15, 2018, (for the latest, 2013, tax year at issue). Appellant’s claims were untimely as the amended returns that identified the overpayments were not filed until June 8, 2020, more than two years after the latest of these dates. Appellant has cited to no authority indicating otherwise that the statute of limitations does not apply in this case.

HOLDING

The statute of limitations bars appellant’s requested application of overpayments from the tax years at issue to the succeeding tax years.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Eddy Y.H. Lam*  
Eddy Y.H. Lam  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Josh Aldrich*  
Josh Aldrich  
Administrative Law Judge

Date Issued: 3/14/2022

original due date of the return. The third time period is one year from the date of payment, which is the date when FTB received payment through its bank levies. (See Treas. Reg. § 301.6611-1(b) & (c).) It was undisputed that the second time period is the latest of all three different time periods.