

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. TAN

) OTA Case No. 21108764
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OPINION

Representing the Parties:

For Appellant: Zexian (Mark) Liu, Tax Appeals Assistance Program
For Respondent: Jason Riley, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Tan (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$4,175.51 for the 2013 tax year, and \$6,063.12 for the 2014 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant is entitled to a refund for the 2013 or 2014 tax year.

FACTUAL FINDINGS

1. Appellant is a California resident. FTB received information that appellant earned wage income for the 2013 and 2014 tax years. FTB determined that appellant earned sufficient income for the 2013 and 2014 tax years to prompt a filing requirement.

2013 Tax Year

2. FTB issued appellant a Request for Tax Return asking that she file or provide evidence that she had already filed her 2013 California Resident Income Tax Return, or explain why she had no filing requirement for the 2013 tax year.

3. When appellant did not respond, FTB issued appellant a Notice of Proposed Assessment (NPA) for the 2013 tax year. The NPA estimated appellant's income, determined that appellant owed tax for the 2013 tax year, and imposed a late-filing penalty. Appellant did not timely protest the NPA, and it became final.
4. FTB initiated collection action. Between May 24, 2016, and June 15, 2018, FTB received all payments due from appellant for the 2013 tax year. The last payment was received on June 15, 2018.

2014 Tax Year

5. FTB issued appellant a Demand for Tax Return asking that she file or provide evidence that she had already filed her 2014 California Resident Income Tax Return, or explain why she had no filing requirement for the 2014 tax year.
6. When appellant did not respond, FTB issued appellant an NPA for the 2014 tax year. The NPA estimated appellant's income, determined that appellant owed tax for the 2014 tax year, and imposed a demand penalty, a late-filing penalty, and a filing enforcement cost recovery fee. Appellant did not timely protest the NPA, and it became final.
7. FTB initiated collection action. Between June 15, 2018, and March 15, 2019, FTB received all payments due from appellant for the 2014 tax year. The last payment was received on March 15, 2019.

Refund Claims

8. On June 7, 2021, appellant filed her 2013 and 2014 California tax returns. Appellant's 2013 California tax return requested a refund, while the 2014 California tax return reported an amount due.
9. FTB accepted appellant's 2013 and 2014 California tax returns but adjusted the reported payments to include amounts received from collections. FTB abated the late-filing penalty for the 2013 tax year. For the 2014 tax year, FTB's inclusion of the payments received from collections resulted in an overpayment for appellant.¹ FTB treated appellant's 2013 and 2014 California tax returns as claims for refund.

¹ FTB did not abate the demand penalty, the late-filing penalty, or the filing enforcement cost recovery fee for the 2014 tax year.

10. On October 6, 2021, FTB denied appellant’s claims for refund because appellant failed to file her California tax returns claiming the refund before the statute of limitations expired.
11. This timely appeal followed.

DISCUSSION

R&TC section 19306(a) provides that no credit or refund shall be allowed or made unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the 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 the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P (*Gillespie*)). 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 Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*)). This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602 (*Dalm*)). Such fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Appellant does not contest – and OTA finds no error in – FTB’s determination that her claims for refund were untimely filed and barred by the statute of limitations. Rather, appellant asserts that the 2013 and 2014 claims for refund amounts are “overcollections” within the meaning of FTB’s Technical Advice Memorandum (TAM) 2007-01, dated April 23, 2007, such that the amounts at issue are not subject to R&TC section 19306(a) and may be returned to the taxpayer even after the statute of limitations has expired. TAM 2007-01 explains that “there is a narrow exception where the statute of limitations provisions do not apply to the return of payments that exceed what FTB is legally allowed to collect and were the result of ‘overcollection.’ . . . [¶] An ‘overcollection’ occurs when the amount collected exceeds the amount actually due under the law as the result of clerical or mechanical error.” TAM 2007-01 further explains that the basic rule distinguishing a barred overpayment from an allowable overcollection is that the former is “based on an assessment that was accurate based on the information available to [FTB] at the time the assessment was made. Collection of amounts

pursuant to a valid assessment will never result in an ‘overcollection’ situation.”² (See *Appeal of Cornbleth*, 2019-OTA-408P [TAM 2007-01 applies only to involuntary collection actions taken by FTB].)

Appellant asserts that FTB did not “reasonably and accurately” estimate appellant’s income when it used the filing status of single and when it determined no dependent exemptions were applicable, resulting in an overcollection. Appellant misconstrues TAM 2007-01, which describes when an involuntary collection action by FTB constitutes an overcollection. TAM 2007-01 does not require FTB to assess a taxpayer “reasonably and accurately” and contrary to appellant’s assertions, nowhere does FTB’s legal guidance state that “[a]ny unreasonable and inaccurate assessment will constitute an overcollection.” As described above, TAM 2007-01 states that an overcollection is the result of a clerical or mechanical error. The use of a different filing status or claiming dependent exemptions is not a clerical or mechanical error. TAM 2007-01 also provides that an assessment based on information available to FTB at the time of the assessment is valid and is therefore not an overcollection. FTB identified the third-party sources used to estimate income in the NPAs and provided appellant the opportunity to resolve any difference in filing status, deductions, exemptions, or credits, when appellant filed the required returns. Appellant’s failure to file returns with the correct filing status or number of dependent exemptions prior to the date when the NPAs went final does not show error in, or otherwise invalidate, FTB’s valid assessments.

Appellant argues in the alternative that the result is unfair as she trusted her tax preparer and attorney to file the returns, and is currently struggling financially.³ However, a taxpayer’s untimely filing of a claim for any reason bars a refund. (*Benemi, supra; Dalm, supra*, 494 U.S. at p. 602.) OTA has no authority to grant relief except where the law specifically allows. (*Gillespie, supra; Benemi, supra.*)

² TAM 2007-01 provides examples of overcollection actions that result from clerical or mathematical error by FTB. TAM 2007-01 also provides three examples of overpayments that result from the taxpayer’s failure to timely file a tax return. OTA notes that appellant does not identify applicable or distinguishable examples, and discussion of the examples are unnecessary to resolve appellant’s claim. OTA therefore does not discuss them further.


³ R&TC section 19316 extends the time for filing a claim for refund if the taxpayer is “financially disabled.” Appellant has not provided any evidence, nor does the evidentiary record show, that she is “financially disabled” within the meaning of R&TC section 19316.

HOLDING

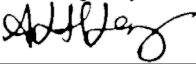
Appellant is not entitled to a refund for the 2013 or 2014 tax year.

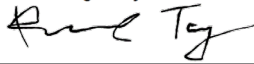
DISPOSITION

FTB's actions in denying appellant's claims for refund are sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

F8E81582726F448...
Richard Tay
Administrative Law Judge

Date Issued: 5/17/2022