

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
C. HYATT

) OTA Case No. 21078175
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OPINION

Representing the Parties:

For Appellant: C. Hyatt

For Respondent: Joel Smith, Tax Counsel III

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Hyatt (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$57,758.77, \$60,342.40, and \$2,733.32 for the 2011, 2012, and 2013 tax years, respectively.

Office of Tax Appeals (OTA) Administrative Law Judges Sara A. Hosey, Sheriene Anne Ridenour, and Ovsep Akopchikyan held an electronic oral hearing for this matter on September 27, 2022. The record was closed at the conclusion of the hearing and this matter was submitted for an opinion.

ISSUE

Whether appellant’s claims for refund for the 2011, 2012, and 2013 tax years are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not timely file California personal income tax returns for the 2011, 2012, and 2013 tax years.

2. FTB learned that Wells Fargo Bank, N.A. issued appellant a Form 1098 Mortgage Interest Statement for the 2011, 2012, and 2013 tax years, reporting appellant paid mortgage interest in each year.
3. FTB determined the amount of mortgage interest paid indicated appellant had sufficient income to have a filing requirement for each year. FTB issued a Demand for Tax Return (Demand) for each year but did not receive a response to any Demand.
4. FTB subsequently issued a Notice of Proposed Assessment (NPA) for each year. Using a 6 to 1 ratio of income to mortgage interest paid, FTB proposed to assess additional tax, a demand penalty, a late-filing penalty, a filing enforcement fee, and interest for each year.
5. FTB did not receive a response to the NPAs and the NPAs became final.
6. FTB collected a net amount of \$57,758.77 for the 2011 tax year between December 10, 2013, and July 10, 2015; a net amount of \$60,342.40 for the 2012 tax year between January 28, 2015, and July 10, 2015; and \$2,733.32 for the 2013 tax year between July 10, 2015, and March 27, 2017.
7. Appellant filed three refund claims on March 15, 2021, requesting a refund of \$57,758.77 for the 2011 tax year, \$60,342.40 for the 2012 tax year, and \$2,733.32 for the 2013 tax year.
8. FTB denied appellant's refund claims on the basis that they are barred by the statute of limitations. This timely appeal followed.

DISCUSSION

The statute of limitations to file a refund claim is set forth in R&TC section 19306. The statute of limitations provides, in relevant part, that no credit or refund may be allowed unless a refund claim 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 date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) Taxpayers have the burden of proving that refund claims are timely and that they are entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Appellant's refund claims are barred by the statute of limitations because they were not filed within the time limitations set forth in R&TC section 19306. The first statute of limitations

period is not applicable because appellant did not timely file his 2011, 2012, and 2013 California tax returns. The second statute of limitations period expired on April 15, 2016, for the 2011 tax year, because the return was due on April 15, 2012; on April 15, 2017, for the 2012 tax year, because the return was due on April 15, 2013; and on April 15, 2018, for the 2013 tax year, because the return was due on April 15, 2014. The third statute of limitations period expired on July 10, 2016, for the 2011 and 2012 tax years, and on March 27, 2018, for the 2013 tax year because FTB collected the last payment for the 2011 and 2012 tax years on July 10, 2015, and the last payment for the 2013 tax year on March 27, 2017. Appellant filed all three refund claims on March 15, 2021. Therefore, appellant’s refund claims are barred by the statute of limitations.

Appellant makes several arguments for why his refund claims are not barred by the statute of limitations. First, appellant argues that the statute of limitations does not apply because appellant is seeking restitution – not a “refund” – of funds that FTB collected for taxes that should have never been assessed.

Second, appellant argues that he did not have income during the 2011 through 2013 tax years and, therefore, there was no “last day prescribed for filing the return” (as that phrase is used in R&TC section 19306) because no returns were due.

Third, appellant argues FTB’s collected funds were “overcollections” within the meaning of FTB’s Technical Advice Memorandum (TAM) 2007-01 – not “overpayments” – and, therefore, the statute of limitations does not apply.

Fourth, appellant argues that even if FTB’s collected funds are overpayments, the overpayments occurred in December 2020, when his liabilities were “written off [by FTB] and a credit was created” for each tax year.

Fifth, appellant argues the statute of limitations was tolled by California Code of Civil Procedure section 338(d), commonly referred to as the “delayed discovery rule,” because FTB’s collections were mistakes and he did not have notice of the mistakes until December 2020.¹

Lastly, as an overarching argument, appellant contends that there is no direct precedent controlling the outcome of this case because he had no income, no tax liability, no obligation to

¹ California Code of Civil Procedure section 338 sets forth a three-year statute of limitations for bringing various civil actions. The delayed discovery rule is an exception to this three-year statute of limitations for causes of action based on fraud or mistake. This rule is applicable only to civil actions filed in state court, and not administrative refund claims. OTA rejects its application in this matter and finds that R&TC section 19306 controls.

file, no evidence of income (such as a Form W-2), no voluntary payments or withholdings, and no notice that the collected amounts were applied to the 2011, 2012, and 2013 tax years.

OTA is unpersuaded by these arguments for the following reasons.

Applicability of the Statute of Limitations

FTB's proposed assessments and collections for the 2011, 2012, and 2013 tax years were proper as a matter of law. FTB learned appellant paid mortgage interest in each tax year. FTB determined that the amount of mortgage interest paid indicated appellant had sufficient income to have a filing requirement. FTB mailed appellant a Demand for each tax year requesting he file a return, state that a return was already filed, or explain why he did not have a filing requirement. Appellant failed to respond to FTB's Demands and failed to otherwise demonstrate why returns were not required.² In such cases, FTB is allowed to assess tax, interest, and penalties based on an estimate of a taxpayer's income. (R&TC, § 19087; *Appeal of Estate of Gillespie, supra.*)

FTB subsequently issued an NPA for each tax year. The NPAs became final 60 days after mailing because appellant did not protest the NPAs. (R&TC, § 19042.) The final assessments became perfected and enforceable state tax liens. (R&TC, § 19221.) FTB was permitted by law to collect funds for each tax year's liability. Therefore, appellant's contention that he is not seeking a refund of properly collected funds is without merit.

Furthermore, appellant's contention that he did not have a filing obligation for the 2011 through 2013 tax years – which OTA construes to mean that the second statute of limitation period does not apply because there was no “last day prescribed for filing the return” (as that phrase is used in R&TC section 19306) – does not change the outcome of this case. R&TC section 19306 provides that a refund claim must be filed by “whichever period expires later.” Even if the second statute of limitations period does not apply, the third statute of limitations

² Appellant has not submitted any evidence establishing that FTB's Demands were sent to an incorrect address. FTB mailed the Demands for the 2011, 2012, and 2013 tax years on June 18, 2013, January 14, 2014, and January 21, 2015, respectively, to appellant's Commonwealth Avenue property. Appellant testified during the hearing that he was the owner of that property until its foreclosure. Appellant's Exhibit 7, which contains FTB's comments about appellant's account, indicates the foreclosure occurred on February 20, 2015, which is after FTB sent the Demands. R&TC section 18416 provides that “any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address” and that “the last known address shall be the address that appears on the taxpayer's last return filed with [FTB], unless the taxpayer has provided to [FTB] clear and concise written or electronic notification of a different address, or [FTB] has an address it has reason to believe is the most current address for the taxpayer.” Appellant has not established the Demands were sent to an incorrect address.

period certainly does, as FTB's collected funds were overpayments that occurred more than one year before appellant filed his refund claims.

FTB's Collected Funds were Overpayments made on the Date Collected

“TAM 2007-01 distinguishes between two types of payments resulting from FTB's involuntary collection actions (e.g., liens, levies, or withholding orders): ‘overpayments,’ which are subject to the provisions of R&TC section 19306(a), and ‘overcollections,’ which may be returned to the taxpayer after the statute of limitations for claiming a refund has expired.” (*Appeal of Cornbleth*, 2019-OTA-408P.) “According to TAM 2007-01, 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.” (*Ibid.*)

Appellant argues that the involuntary taking of over \$100,000 based on estimates of appellant's income for the 2011 through 2013 tax years is a mistake, as appellant had no tax liability and no obligation to file a return for those years. Based on this mistake, appellant argues the collected funds are “overcollections” within the meaning of TAM 2007-01 and, therefore, may be returned to him because the statute of limitations does not apply.

OTA finds that FTB did not collect more than the amount due for each tax year. There is also no evidence that FTB's collection actions involved a clerical or mechanical error. As noted above, FTB's proposed assessments based on estimated income became perfected and enforceable tax liens. It was appellant's failure to respond to FTB's Demands and NPAs that resulted in the overpayments, not FTB's mistakes. Like in Examples 5 and 6 of TAM 2007-01, FTB's assessments and collections were legally allowed.

Lastly, OTA rejects appellant's argument that the overpayments were made in December 2020, when his liabilities were “written off [by FTB] and a credit was created” for the 2011 through 2013 tax years. Payments made by a taxpayer through FTB's collection efforts are effective the date the payments are received. Appellant's FTB account does not reflect any payment made within one year of appellant filing his refund claims.

HOLDING

Appellant’s claims for refund for the 2011, 2012, and 2013 tax years are barred by the statute of limitations.

DISPOSITION

FTB’s actions are sustained.

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 11/21/2022