

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

In the Matter of the Appeal of:  
**M. WOOTEN**

) OTA Case No. 220310005  
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**OPINION**

Representing the Parties:

For Appellant: M. Wooten

For Respondent: Camille Dixon, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Wooten (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$9,690<sup>1</sup> for the 2015 tax year.

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

**ISSUES**

1. Whether appellant’s claim for refund for the 2015 tax year is barred by the statute of limitations.
2. Whether appellant has established an overpayment for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed his 2015 California Resident Income Tax Return (Form 540) on January 31, 2016. After California adjustments, a standard deduction, a personal exemption credit, and applying withholding credits, appellant reported an overpayment of \$845. FTB refunded the reported overpayment to appellant.
  - a. A Wage and Tax Statement (Form W-2 or W-2) for the 2015 tax year was included with appellant’s Form 540. The W-2 is consistent (e.g., reported wages

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<sup>1</sup> Claimed refund of \$10,629 less California State Disability Insurance (SDI) withholding of \$939.

and various withholdings) with amounts reported on appellant's Form 540 for the 2015 tax year.

2. On May 15, 2021, respondent received appellant's amended Form 540 for the 2015 tax year. Thereon, appellant reported \$0 state wages, \$0 federal adjusted gross income (AGI), \$0 California AGI, \$4,004 in deductions, and \$0 taxable income for \$0 tax due. After reporting withholding credits in the amount of \$10,535 and \$939 in excess California State Disability Insurance (SDI) withholding, appellant reported \$11,474 in total payments, which was reduced by the previously issued refund of \$845, for a requested refund total of \$10,629.
3. FTB processed the return and reduced the tax to \$0. FTB did not allow the claimed excess withholding credits of \$939 for SDI.
4. On February 9, 2022, FTB notified appellant that his claim for refund in the amount of \$9,690 was time-barred by the statute of limitations.
5. Appellant timely appealed to the Office of Tax Appeals (OTA) by letter dated February 26, 2022.

### DISCUSSION

#### Issue 1. Whether appellant's claim for refund for the 2015 tax year is barred by the statute of limitations.

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 overpayment. (R&TC, § 19306(a).) R&TC section 19322 provides that every refund claim shall be in writing, signed by his or her representative, and shall state the specific grounds on which the claim is founded. A taxpayer bears the burden of proving entitlement to a refund claim. (*Appeal of Jali, LLC*, 2019-OTA-204P; *Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs., tit. 18, § 30219(a).)

The law does not provide for the waiver of the statute of limitations period based on reasonable cause. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) A taxpayer's failure, for whatever reason, to file a claim for refund or credit within the statutory period prevents the

taxpayer from doing so at a later date. (*Appeal of Estate of Gillespie, supra.*) This is true even when it is later shown that the tax was not owed in the first instance. (*Appeal of Benemi Partners, L.P., supra.*) Such fixed deadlines may appear harsh because they can be missed, but the occasional resulting harshness is redeemed by the clarity of the legal obligation imparted. (*Ibid.*)

Appellant argues that FTB erred in its refund denial because the monies he received during the 2015 tax year, and any other year, did not qualify as taxable income pursuant to the United States Code (U.S.C.), title 26, sections 3121(a) and 3401(a), (c), or (d). Appellant claims that he is not a taxpayer as defined by law, and that the monies that are being withheld from him were erroneously collected. As support, appellant cites to the U.S.C., title 28, section 1345 and unidentified federal court rulings. Appellant asserts that he timely filed the amended Form 540 within the six-year statute of limitations identified in the U.S.C., title 28, section 2501. It is also appellant's position that FTB's denial of the claim for refund constitutes extortion according to his interpretation of the U.S.C., of title 18 section 872.<sup>2</sup>

Here, OTA notes that this appeal is governed by California law. For taxable years beginning on or after January 1, 2015, California generally conforms to the Internal Revenue Code (IRC) as in effect on January 1, 2015. (R&TC, § 17024.5; See also Form 540 Instructions.) However, there are continuing differences between California and federal law. (*Ibid.*) Contrary to appellant's positions, the applicable statute of limitations is codified in R&TC section 19306(a). R&TC section 19306(a) establishes three methods for determining expiration of the statute of limitations. Under the four-year statute of limitations method, the statute of limitations expired on July 15, 2020.<sup>3</sup> Appellant's claim for refund was filed on May 15, 2021, which is after the four-year statute of limitations. The one-year statute of limitations is analyzed from the date of overpayment. The date of an overpayment is the date of the payment of the first amount that exceeds the tax liability and the dates of payments of all amounts subsequently paid with respect to such tax liability. (Treas. Reg. § 301-6611-1(b).) Appellant's only payments are his withholding credits, which are deemed paid on

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<sup>2</sup> Appellant makes several other arguments that are meritless or frivolous. OTA finds that it need not address them. (See *Appeal of Balch*, 2018-OTA-159P.)

<sup>3</sup> FTB issued FTB Notice 2020-02, which extended the statute of limitations for a 2015 claim for refund from April 15, 2020, until July 15, 2020.

April 15, 2016. Thus, the one-year statute of limitations expired on April 15, 2017.

Accordingly, OTA finds that appellant's claim for refund is barred by the statute of limitations.

Issue 2 Whether appellant has established an overpayment for the 2015 tax year.

While the preceding finding is dispositive of this appeal, OTA notes that taxable income is defined broadly. (*Appeal of Balch*, 2018-OTA-159P.) Furthermore, the W-2 included with appellant's initial Form 540 is credible evidence that appellant earned taxable wages in 2015. Wages and compensation for services are gross income within the meaning of IRC section 61. (*U.S. v. Buras* (9th Cir. 1980) 633 F.2d 1356, 1361; *Appeals of Wesley, et al.* (2005-SBE-002) 2005 WL 3106917.) In other words, “[c]ompensation for labor or services, paid in the form of wages or salary, has been universally, held by the courts of this republic to be income, subject to the income tax laws currently applicable.” (*U.S. v. Romero* (1981) 640 F.2d 1014, 1016.) As demonstrated by the previously cited federal and state precedence, appellant's interpretation of the law is misinformed. That conclusion notwithstanding, appellant has not provided relevant, competent, or credible evidence to meet his burden of proof. OTA finds that appellant has failed to meet his burden of proof that an overpayment existed.

HOLDINGS

1. Appellant’s claim for refund is barred by the statute of limitations.
2. Appellant has not established an overpayment for the 2015 tax year.

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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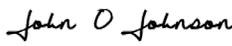
Josh Aldrich  
 Administrative Law Judge

We concur:

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Natasha Ralston  
 Administrative Law Judge

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John O. Johnson  
 Administrative Law Judge

Date Issued: 2/8/2023