

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 22019472  
T. MILLER AND )  
U. MILLER )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Kayla Radnia,  
Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Casey Green, Tax Counsel III

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Miller and U. Miller (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund for the 2011, 2012, 2013, and 2014 tax years.<sup>2</sup>

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

**ISSUE**

Whether appellants’ claims for refund are barred by the statute of limitations.

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<sup>1</sup> Appellant T. Miller submitted appellants’ opening brief. Martha D. Ludlum of TAAP filed appellants’ reply brief.

<sup>2</sup> Appellants filed a tax return for 2011 that reported tax due of \$6.00. As the tax payments made by appellants exceeded the tax shown as due on that return, FTB treated the return as a claim for refund of \$5,783.42 for the 2011 tax year. For the 2012, 2013, and 2014 tax years, appellants filed returns claiming refunds of \$9,421.00, \$6,425.00, and \$442.00, respectively. As the tax payments made by appellants exceeded the tax shown as due on appellants’ 2012 and 2013 returns, FTB treated those returns as claims for refund of \$14,686.83 and \$8,644.81, respectively.

FACTUAL FINDINGS

1. Appellants did not timely file income tax returns for the 2011, 2012, 2013, and 2014 tax years.
2. Through its Integrated Non-Filer Compliance program, FTB obtained information indicating that for the 2011, 2012, and 2013 tax years, employers had reported wages earned by appellants, which indicated that appellants had sufficient income to have a filing requirement for each year.
3. For each of those years, FTB issued to appellants a Demand for Tax Return (demand). Each demand set a deadline for appellants to respond and stated that if FTB did not receive a timely response in the manner prescribed, it would assess a demand penalty of 25 percent.
4. The record includes no response to the demands, and FTB indicates that appellants failed to provide the information requested by the demands. As a result, FTB issued to appellants Notices of Proposed Assessment (NPAs) for the 2011, 2012, and 2013 tax years.
  - a. For the 2011 tax year, FTB issued an NPA on April 2, 2013. Based on information from two employers reporting wages totaling \$180,716.00, FTB estimated appellants' tax obligation as \$14,038.00 and computed an underpayment of \$1,576.00. FTB also proposed a late-filing penalty of \$394.00, a demand penalty of \$3,509.50, and a filing enforcement fee of \$82.00, plus accrued interest.
  - b. For the 2012 tax year, FTB issued an NPA on March 17, 2014. Based on information from two employers reporting wages totaling \$151,916.00, FTB estimated appellants' tax obligation as \$11,270.00 and computed an underpayment of \$1,769.00. FTB also proposed a late-filing penalty of \$442.25.00, a demand penalty of \$2,817.50, and a filing enforcement fee of \$78.00, plus accrued interest.
  - c. For the 2013 tax year, FTB issued an NPA on June 22, 2015. Based on information from an employer reporting wages totaling \$107,154.00, FTB estimated appellants' tax obligation as \$7,059.00 and computed an underpayment of \$283.00. FTB also proposed a late-filing penalty of \$135.00, a demand

penalty of \$1,764.75, and a filing enforcement fee of \$76.00, plus accrued interest.

- d. Each NPA informed appellants that the proposed assessment would become due and payable if FTB did not receive appellants' income tax return or their protest of the proposed assessment within 60 days.
5. Appellants did not timely protest the NPAs or file returns, and the NPAs became final.
6. In 2014, appellant T. Miller contacted FTB to set up a payment plan, since he had not filed tax returns for 2011 or 2012.
7. Appellants made a series of payments and FTB collected payments through bank levies. The banks' letters to appellants regarding the funds withheld and forwarded to FTB were dated April 1, 2016, and March 23, 2018. The funds collected by levy represent the most recent payments applied to appellants' liabilities.
8. On June 28, 2021, appellants filed California Nonresident or Part-Year Resident income tax returns for tax years 2011, 2012, 2013, and 2014, which reflected total tax of \$326, \$254, \$351, and zero, respectively.
9. Since those tax amounts were less than the amounts appellants had paid for each tax year, FTB treated the tax returns as claims for refund of the amounts by which the payments exceeded the reported tax.
10. On October 14, 2021, and October 18, 2021, FTB denied the refund claims on the basis that appellants had not filed claims for refund within the period established by the statute of limitations.

### DISCUSSION

If there has been an overpayment by a taxpayer of any liability imposed under the Personal Income Tax Law or the Corporation Tax Law, for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer, and the balance shall be refunded to the taxpayer. (R&TC, § 19301; *Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that its claim for refund is timely and that a refund should be granted. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

R&TC section 19306(a) provides that no credit or refund shall be allowed unless a claim for refund is filed within: (1) four years from the date the return was filed, if the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four

years from the due 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. The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*)

Appellants filed their income tax returns for all four years on June 28, 2021. To determine whether the returns represented timely claims for refund, it is necessary to consider each period identified in R&TC section 19306(a).

Income tax returns for 2011, 2012, 2013, and 2014 would ordinarily be due on April 15 in the years of 2012, 2013, 2014, and 2015, respectively. In this case, appellants assert that appellant T. Miller was deployed in military service outside the United States from 2009 through 2013. FTB notes that, if appellants' assertion were supported by evidence, the resulting due date for the returns for 2011, 2012, and 2013 would be June 30, 2014,<sup>3</sup> which is 180 days after appellant T. Miller's December 31, 2013 return from deployment. (R&TC, § 18570(a).) Here appellants' returns for all four years were filed on June 28, 2021, which was approximately seven years after the end of the extended period for filing of the returns for 2011, 2012, and 2013. Also, June 28, 2021, is more than six years after April 15, 2015, the due date for the 2014 income tax return. Thus, the returns do not meet the requirements of the first two periods described in R&TC section 19306(a).

The next step of the analysis is to determine whether the income tax returns were filed within one year from the dates of overpayment. For each of the years 2011, 2012, 2013, and 2014, appellants' employers reported amounts withheld from appellants' wages. For each of the amounts withheld by employers, the amount is deemed paid on the original due date of the return. (R&TC, § 19002(c)(1).) Thus, the most recent payment dates related to amounts withheld by employers was April 15, 2015 (for the amounts withheld for the tax year 2014).

Appellants also made payments, some of which were made voluntarily and one of which was collected by levy from appellants' bank. The most recent payment for the tax years at issue was collected on April 15, 2016. That date is more than five years before June 28, 2021, the date on which appellants filed their California Nonresident or Part-Year Resident income tax returns for all four tax years. Therefore, the returns, which were treated as claims for refund, were not filed within one year from the date of any of the overpayments, and the requirements of the third

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<sup>3</sup> 180 days from December 31, 2013, is June 29, 2014; the minor difference is not relevant to this analysis.

period described in R&TC section 19306(a) have not been met. Thus, the claims for refund are barred by the statute of limitations.

Appellants make several arguments alleging why their refund claims are not barred by the statute of limitations, including that their failure to timely file the tax returns or to timely file claims for refund was due to reasonable cause. Appellants explain that appellant T. Miller was deployed and served overseas from 2009 to 2013, and during that time he experienced several challenging situations, including two deaths in his family, and his own serious illness; and when he returned from deployment, he faced additional difficulties including unemployment and family issues.

Furthermore, appellants argue that FTB should be equitably estopped from claiming the time bar of the statute of limitations, based on appellant T. Miller's communication with FTB, and that appellants are entitled to a refund based on a doctrine of equitable recoupment. Citing FTB's Technical Advice Memorandum (TAM) 2007-01, dated April 23, 2007, appellants assert that the claimed amounts are not overpayments, but rather overcollections that may be returned to appellants even after the statute of limitations has expired.

While the Office of Tax Appeals (OTA) sympathizes with appellants' circumstances, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) As noted above, the language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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. (*Ibid.*) 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.)

Regarding appellants' position that this appeal involves "overcollections," 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." (See *Appeal of Cornbleth, supra.*) 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.” (*Ibid.*) Here, the evidence establishes that FTB did not collect more than the amount due for each tax year, based on the information available to FTB at the time the NPAs were issued. There is no evidence that FTB’s actions involved a clerical or mechanical error. Thus, FTB’s assessments and collections were legally allowed, and the narrow exception for overcollections does not apply.

OTA has no authority to grant relief except where the law specifically allows. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no statutory basis to suspend the statute of limitations in this case, and OTA finds that the claims for refund are barred by the statute of limitations. Therefore, no refund can be made.

#### HOLDING

Appellants’ claims for refund are barred by the statute of limitations.

#### DISPOSITION

FTB’s actions denying appellants’ refund claims for the 2011, 2012, 2013, and 2014 tax years are sustained.

DocuSigned by:

*Suzanne B. Brown*

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Suzanne B. Brown  
Administrative Law Judge

We concur:

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*Huy “Mike” Le*

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Huy “Mike” Le  
Administrative Law Judge

DocuSigned by:

*Sara A. Hosey*

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Sara A. Hosey  
Administrative Law Judge

Date Issued: 8/15/2023