

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**C. EDMOND**

) OTA Case No. 230212536  
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**OPINION**

Representing the Parties:

For Appellant: C. Edmond

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Ethan Choy, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Edmond (appellant) appeals an alleged denial by respondent Franchise Tax Board (FTB) of appellant’s claim for refund of \$8,793.54 for the 2019 tax year.

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

**ISSUE**

Whether the Office of Tax Appeals (OTA) has jurisdiction to hear appellant’s appeal of FTB’s alleged denial of her claim for refund.

**FACTUAL FINDINGS**

1. FTB received information that appellant made sufficient income in 2019 that would require her to file a return for that year. Specifically, FTB was informed that in 2019, appellant received \$152,329 in wages from her employer and \$100 in interest income.
2. Unable to locate a 2019 return from appellant in its records, FTB issued a Request for Tax Return. After appellant failed to respond, FTB issued a Notice of Proposed

Assessment (NPA), which proposed an assessment of tax of \$2,007.00,<sup>1</sup> a late filing penalty of \$501.75, and interest. The tax, penalty, and interest became due and payable when appellant failed to timely protest the NPA.

3. FTB issued to appellant several collection notices indicating that it would begin collection activities if appellant did not pay the balance due.
4. Thereafter, appellant applied for an installment agreement, which FTB accepted as a Provisional Payment Plan (Provisional Plan), as appellant had yet to file a 2019 return.<sup>2</sup> Per the terms of the Provisional Plan, appellant would pay \$250 a month to FTB towards her 2019 liability. Appellant also agreed to file a 2019 return within 30 days of receipt of FTB's acceptance letter of the Provisional Plan.
5. Between June 2022 and December 2022, appellant made monthly payments of \$250 towards her 2019 liability, per the Provisional Plan.
6. Because appellant had not yet filed a return, FTB issued a Return Not on File Notice, requesting that a return be filed.
7. Appellant filed her 2019 California tax return on December 30, 2022. Appellant reported taxable income of zero and requested a refund of income tax withholdings of \$8,793.54.
8. On March 3, 2023, FTB issued a Notice of Frivolous Return Determination and Demand for Tax Return, which assessed a \$5,000 frivolous return penalty based on FTB's determination that appellant's return was frivolous.
9. On March 1, 2023, FTB sent a notice which purportedly denied appellant's claim for refund because it was based on a frivolous return.
10. This timely appeal followed.
11. On appeal, FTB provides the Tax Year Detail indicating that appellant owes a balance of \$1,010.17 for 2019 and has not made payments towards the balance since December 2022.

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<sup>1</sup> This amount is equal to total tax of \$10,800.00 less withholding credits of \$8,793.00.

<sup>2</sup> FTB's Provisional Plan approval letter states that the appellant's payment plan was accepted under the authority of R&TC section 19008(a), and that FTB will accept monthly payments to avoid involuntary collection action during the time needed to file valid state tax returns for certain missing years.

DISCUSSION

OTA’s jurisdiction includes where FTB mails a notice of action on cancellation, credit or refund, or any other notice which denies any portion of a “perfected” claim for refund of tax, penalties, fees, or interest. (Cal. Code Regs., tit. 18, § 30103(a)(3).) In addition, OTA’s jurisdiction includes where FTB fails to act on a perfected claim for a refund of tax, penalties, fees, or interest within six months after the claim is filed with FTB. (Cal. Code Regs., tit. 18, § 30103(a)(4).) A claim for refund of tax is “perfected” when it is in writing, signed by the taxpayer or authorized representative, and states the specific grounds upon which it is founded. (R&TC, § 19322.) In addition, for a claim to be “perfected,” all amounts due for the tax year, including tax, penalty, and interest, must be paid. (FTB Notices 2005-6 and 2003-5.)<sup>3</sup> A claim for refund that is otherwise valid under R&TC section 19322, but that is made in the case in which payment of the entire tax assessed or asserted has not been made, shall be a claim only for purposes of tolling the time periods set forth in R&TC section 19306. (R&TC, § 19322.1(a).) For all other purposes, the claim shall be deemed filed on the date that full payment of the tax is made. (*Ibid.*)

FTB’s Tax Year Detail indicates that appellant owes a balance of \$1,010.17 for 2019 and has not made any payments towards the balance since December 2022. Appellant’s claim for refund is not perfected until full payment is made on the balance due. (R&TC, § 19322.1.) Therefore, appellant’s claim for refund has not been perfected. Accordingly, without a perfected claim for refund, OTA does not have jurisdiction over appellant’s appeal of the claim for refund.

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<sup>3</sup> These notices are available at <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2005-6.pdf>, and <https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2003-5.pdf>.

HOLDING

OTA does not have jurisdiction to hear appellant’s appeal of FTB’s purported denial of her claim for refund.

DISPOSITION

OTA lacks jurisdiction over this appeal and therefore appellant is not entitled to the claimed refund for the 2019 tax year.

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

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

DocuSigned by:  
*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

Date Issued: 10/10/2023