

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21129352
M. VANCE)
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OPINION

Representing the Parties:

For Appellant: Toni Washington,
Tax Appeals Assistance Program (TAAP)¹

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Vance (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund for the 2016 tax year.²

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

ISSUE

Whether appellant is entitled to a refund or credit for the 2016 tax year.³

FACTUAL FINDINGS

1. Appellant failed to timely file her 2016 California income tax return (Return).

¹ Appellant filed the opening brief, Charlie Starnes of TAAP filed appellant’s reply brief, and Toni Washington of TAAP filed appellant’s supplemental brief.

² Appellant’s return reported zero total tax. Respondent treated the return as a claim for refund of \$10,427.99, which is the amount of tax respondent collected from appellant for the 2016 tax year. On appeal, appellant argues that she is entitled to a refund of \$10,428.

³ This appeal was originally consolidated with appellant’s claim for refund for the 2015 tax year; however, respondent subsequently granted the claim. The appeals were deconsolidated and the 2015 tax year was dismissed.

2. Consequently, respondent issued to appellant a Demand for Tax Return (Demand) requiring appellant, by the deadline specified therein, to file the Return, show that it had already been filed, or explain why appellant did not have a filing requirement.
3. Appellant failed to respond to the Demand.
4. Respondent issued a Notice of Proposed Assessment (NPA) to appellant which estimated appellant's income based on third-party reporting by ASAP PROFESSIONAL STAFFING CORPORATION (ASAP) on IRS Form 1099-MISC and proposed to assess tax, a late-filing penalty, a notice and demand penalty (demand penalty), a filing enforcement fee, and applicable interest for the 2016 tax year.
5. Appellant did not protest the NPA and it became final (i.e., the liability stated therein became due and payable).
6. From November 5, 2018, through December 15, 2019, respondent collected payments of \$10,427.99 from appellant via wage garnishment, satisfying appellant's liability.
7. On November 5, 2021, appellant filed the Return reporting zero total tax.
8. Respondent accepted the Return as filed and determined that appellant had an overpayment of \$10,427.99 for the 2016 tax year. Respondent treated the Return as a claim for refund.
9. Respondent notified appellant that it was denying her refund claim and would not refund or credit the overpayment to appellant because it determined that the Return was filed outside the generally applicable statute of limitations for making a refund claim.
10. This timely appeal followed.
11. The IRS did not assess any tax deficiency for appellant's 2016 tax year, and on May 16, 2022, appellant filed her 2016 federal income tax return reporting zero tax.

DISCUSSION

It is undisputed that appellant's claim was not filed within the general limitation period for making a refund claim.⁴ Appellant provides three grounds⁵ for allowing her overpayment for the 2016 tax year to be refunded or credited to her even though her Return was filed outside the general limitation period for making a refund claim. The Office of Tax Appeals (OTA) addresses each of these arguments separately, below.

The Limitation Period for Refunds Based on a Federal Change or Correction

R&TC section 19311 provides that if a change or correction is made by the IRS, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination, if later than the general limitation period. (R&TC, § 19311(a)(1).)

Appellant argues that the limitation period provided for by R&TC section 19311(a)(1) applies here because the IRS accepted the zero total tax reported on her federal income tax return filed on May 16, 2022, and consequently, the Return was timely because it was filed within two years of this date.

However, the statute is clear that for the limitations period of R&TC section 19311(a)(1) to apply there must be: (1) an IRS change or correction; and (2) a refund claim resulting from that adjustment. (R&TC, § 19311(a)(1).) Here, for the 2016 tax year, the IRS did not assess a tax deficiency against appellant or determine a refund was due. Consequently, the IRS's acceptance of the amounts reported by appellant does not constitute a change or correction to any previously determined amount. In addition, the Return was filed on November 5, 2021, prior to

⁴ R&TC section 19306(a) sets forth the general statute of limitations period for filing a refund claim, which is the later of: (1) four years from the date the return is filed, if filed on or before the extended due date; (2) four years from the due date of the return without regard to any extensions; or (3) one year from the date of overpayment.

⁵ Appellant also argues that she was "deprived of her property without sufficient notice pursuant to the 14th amendment of the U.S. Constitution and Article 1, Section 7 of the California State Constitution." Appellant does not elaborate further upon this argument. However, the Office of Tax Appeals (OTA) lacks jurisdiction to consider whether appellant is entitled to a remedy for respondent's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. (Cal. Code Regs., tit. 18, § 30104(e).) Appellant does not claim that respondent's alleged violation affected the adequacy of respondent's refund claim denial letter, the action from which a timely appeal was made, or the amount at issue in this appeal. Therefore, OTA will not address this contention any further.

appellant's May 16, 2022 filing of her federal income tax return; therefore, appellant's refund claim could not have resulted from any federal adjustment.

For these reasons, OTA finds that R&TC section 19311(a)(1)'s limitation period for making a refund claim is inapplicable here.

Overcollection

Respondent's Technical Advice Memorandum (TAM) 2007-01 (April 23, 2007) provides that an "overcollection" occurs when the amount collected by respondent through an involuntary collection action, such as a lien or levy, exceeds the amount actually due under the law as the result of a clerical or mechanical error by respondent. (See also *Appeal of Cornbleth*, 2019-OTA-408P.) "The basic rule utilized in distinguishing between an 'overcollection' and a barred overpayment is whether amounts collected were based on an assessment that was accurate based on the information available to [respondent] at the time the assessment was made." (TAM 2007-01.) It has long been respondent's position that overcollections can be refunded even if the statute of limitations for filing a refund claim has expired. (TAM 2007-01.)

Appellant contends that the payments which respondent collected via wage garnishment should be refunded to her because they were the result of an overcollection. Appellant argues that respondent erred in making its assessment because respondent knew or should have known, based on information obtained through its Integrated Nonfiler Compliance system, that appellant was a licensed nurse who worked from home and that the payments to appellant reported on IRS Form 1099-MISC were tax-exempt pursuant to IRS Notice 2014-7, 2014-4 I.R.B. 445.

IRS Notice 2014-7 considers payments made to individual care providers under California's In-Home Supportive Services (IHSS) programs to be excludable from gross income as "difficulty of care payments" under Internal Revenue Code section 131 (to which California conforms at R&TC section 17131). (See *Appeal of Akhtar*, 2021-OTA-118P [IHSS income is excludable from gross income].) However, appellant's job as a licensed nurse working from home does not show that the payments she received were for services provided under an IHSS program. An overcollection occurs as a result of a clerical or mechanical error in reviewing available information. Here, respondent's deficiency assessment was not the result of a clerical or mechanical error, but rather, was based on ASAP's income reporting on Form 1099-MISC. Appellant failed to timely inform respondent that her income was from an IHSS program.

Accordingly, OTA finds that there was no overcollection by respondent.

Equitable Consideration

Finally, appellant argues that it would be inequitable to allow respondent to retain appellant's overpayment because respondent failed to give taxpayers sufficient notice of the exemption provided by IRS Notice 2014-7, and as a result, appellant's tax return preparation software had not yet been updated to account for this exemption, making it impossible for appellant to properly report the income on her Return.

However, there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed, meaning that except in very limited situations which are not present here,⁶ a taxpayer's untimely filing of a claim for any reason bars a refund. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Based on the foregoing, OTA finds that appellant is not entitled to a refund or credit of taxes paid for the 2016 tax year.

⁶ R&TC section 19316 suspends the statute of limitations during any period where the taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (See *Appeal of Estate of Gillespie*, 2018-OTA-052P.) This provision is not applicable here.

HOLDING

Appellant is not entitled to a refund or credit for the 2016 tax year.

DISPOSITION

Respondent’s action is sustained.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

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

Date Issued: 3/11/2024