

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

In the Matter of the Appeal of: )  
**R. BOBUS** ) OTA Case No. 230513185  
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**OPINION**

Representing the Parties:

For Appellant: R. Bobus

For Respondent: Andrea Watkins, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Bobus (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$8,808.77 for the 2013 tax year and \$1,362.23 for the 2017 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 2013 tax year is barred by the statute of limitations.
2. Whether appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

**FACTUAL FINDINGS**

1. Through its Integrated Non-Filer Compliance (INC) Program, FTB obtained information indicating that appellant may have had an active professional license, and may have received taxable income, during 2013. On April 21, 2015, FTB sent appellant a Request for Tax Return (Request) for the 2013 tax year requesting that appellant file a return,

- provide a copy of the return if appellant already filed one for the 2013 tax year, or explain why appellant did not have a filing requirement.
2. When FTB did not receive a response to its Request, it issued a Notice of Proposed Assessment (NPA) estimating appellant's income for the 2013 tax year. The NPA proposed total tax of \$8,475, a late filing penalty, a demand penalty, a filing enforcement fee, and interest.
  3. Appellant did not protest the NPA, and the tax, penalties, fee, and interest proposed in the NPA became due and payable.
  4. FTB initiated collection action and applied the payments received to appellant's 2013 account.
  5. Through its INC Program, FTB obtained information indicating that during 2017, appellant may have had an active professional license, and may have received taxable income. On May 11, 2021, FTB sent appellant a Demand for Tax Return (Demand) for the 2017 tax year requesting that appellant file a return, provide a copy of the return if appellant already filed one for the 2017 tax year, or explain why appellant did not have a filing requirement.
  6. When FTB did not receive a response to its Demand, it issued an NPA estimating appellant's income for the 2017 tax year. The NPA proposed tax of \$8,857, a late filing penalty, a demand penalty, a filing enforcement fee, and interest.
  7. Appellant did not protest the NPA, and the tax, penalties, fee, and interest proposed in the NPA became due and payable.
  8. FTB initiated collection action and applied the payments received to appellant's 2017 account.
  9. On January 12, 2023, appellant filed a 2013 California Resident Income Tax Return reporting total tax of \$422 and a 2017 California Resident Income Tax Return reporting zero taxable income. FTB treated these returns as claims for refund, accepted the returns, and abated the penalties assessed, resulting in overpayments on appellant's 2013 and 2017 accounts. FTB applied appellant's payments remitted between January 12, 2022, and January 13, 2023, to appellant's other tax years and issued appellant a refund for the remainder. For the 2013 tax year, the amount of overpayments which were not refunded

totaled \$8,808.77. For the 2017 tax year, the amount of overpayments which were not refunded totaled \$1,362.23.

10. This timely appeal followed.

### DISCUSSION

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 the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*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.) 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. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

### 2013

There is no dispute that appellant did not file a timely 2013 California income tax return. As a result, the first four-year statute of limitations period is inapplicable. Appellant's 2013 tax return had an original due date of April 15, 2014. The second four-year statute of limitations expired on April 15, 2018. Appellant did not file his 2013 tax return (which FTB treated as a claim for refund) until January 12, 2023, which was over four years after the deadline.

Appellant made approximately 30 payments on his 2013 account, occurring from April 2016 to October 2022 for a total of \$8,808.77. Pursuant to the one-year statute of limitations, appellant's claim for refund needed to be filed within one year of the date of payment to be timely. Because appellant's claim for refund was not filed until January 12, 2023, only one payment made in October 2022 was within the one-year statute of limitations period. FTB has already credited that payment in part to another of appellant's tax years and refunded it

in part. The remaining payments are beyond both the one-year statute of limitations period and the four-year period and are therefore untimely and barred by the statute of limitations.

### 2017

There is no dispute that appellant did not file a timely 2017 California income tax return. As a result, the first four-year statute of limitations period is inapplicable. Appellant's 2017 tax return had an original due date of April 15, 2018. The second four-year statute of limitations expired on April 15, 2022. Appellant did not file his 2017 tax return (which FTB treated as a claim for refund) until January 12, 2023, which was over eight months after the deadline.

Appellant made approximately 13 payments on his 2017 account, occurring from January 2022 to November 2022 for a total of \$1,362.23. Pursuant to the one-year statute of limitations, appellant's claim for refund needed to be filed within one year of the date of payment to be timely. Because appellant's claim for refund was not filed until January 12, 2023, only payments made on or after January 12, 2022, are within the one-year statute of limitations period. FTB has already refunded payments received after that day to appellant. The remaining payments are beyond both the one-year statute of limitations period and the four-year period and are therefore untimely and barred by the statute of limitations.

### Statute of Limitations Exception

Appellant's reply brief requests confirmation that funds garnished from his bank accounts and wages are subject to the same statute of limitations as payments made by appellant to FTB directly. The general statute of limitations provided in R&TC section 19306 applies to all forms of overpayment, including funds received as a result of collection activity by FTB. However, "there is a narrow exception where the statute of limitations provisions does not apply to the return of payments that exceed what FTB is legally allowed to collect and were the result of 'overcollection.'" (*Appeal of Cornbleth*, 2019-OTA-408P, citing FTB Technical Advice Mem. 2007-01 (Apr. 23, 2007).) An overcollection occurs where, as the result of a clerical or mechanical error, FTB has collected through its enforcement mechanisms (e.g., liens, levies, or garnishment orders) an amount exceeding that which is actually due under the law. (*Ibid.*) The distinction between an "overcollection" and a barred overpayment is whether the "amounts collected were based on an assessment that was accurate based on the information available to . . . FTB at the time the assessment was made." (TAM 2007-01.)


Here, the 2013 and 2017 assessments were based on information from sources available to FTB through its INC Program. There is no evidence that FTB’s collection actions involved a clerical or mechanical error. It was appellant’s failure to file timely returns or respond to FTB’s Demands and NPAs that resulted in the assessments and collection activity. Accordingly, the exception for overcollections does not apply to appellant’s situation.

HOLDINGS


1. Appellant’s claim for refund for the 2013 tax year is barred by the statute of limitations.
2. Appellant’s claim for refund for the 2017 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claims for refund is sustained.

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 Veronica I. Long  
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Andrea L.H. Long  
 Administrative Law Judge

Date Issued: 3/12/2024