

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21129184  
M. BRIGGS )  
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**OPINION**

Representing the Parties:

For Appellant: Crystal Ciaramitaro, Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Marguerite Mosnier, Attorney  
Andrea Watkins, 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. Briggs (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund in the amount of \$5,482.37 for the 2015 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Amanda Vassigh, Veronica Long, and Natasha Ralston held an oral hearing for this matter electronically on March 21, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

**ISSUE**

Whether appellant is due an additional refund or credit for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellant did not timely file his 2015 California income tax return (Return).

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<sup>1</sup> Appellant filed his opening brief. Janet Lim of TAAP filed appellant’s first reply brief, Allan Yue filed appellant’s following three reply briefs and Crystal Ciaramitaro represented appellant at the hearing.

2. Consequently, respondent estimated appellant's income based on third-party information returns and issued a Notice of Proposed Assessment (NPA) to appellant for \$8,082 tax, a \$2,020.50 late filing penalty and applicable interest, for the 2015 tax year.
3. Appellant did not protest the NPA and it became final.
4. Appellant also failed to timely file his 2015 federal income tax return.
5. Consequently, the IRS prepared a substitute for return (SFR) on appellant's behalf showing a tax due of \$38,411, which was assessed on March 18, 2019.
6. From November 12, 2019, through July 15, 2020, respondent collected \$2,312.50 from appellant via wage garnishment.
7. On January 15, 2020, respondent received a \$3,577.50 payment from appellant.
8. On February 17, 2021, respondent applied appellant's \$959 overpayment from the 2020 tax year to appellant's 2015 tax year liability.
9. On September 27, 2021, respondent received appellant's Return dated September 23, 2021, reporting federal adjusted gross income of \$31,243, total tax of \$528<sup>2</sup> and a withholding credit of \$293, which respondent accepted as filed.
10. In processing the Return, respondent determined that appellant had an overpayment for the 2015 tax year. Respondent therefore treated the Return as a claim for refund and transferred a total of \$1,021.05 from appellant's 2015 tax year to appellant's 2016, 2017 and 2018 tax years but did not refund or credit the remaining credit balance of \$5,482.37 because it determined that the Return was filed outside the generally applicable statute of limitations for making a refund claim with respect to this amount.<sup>3</sup>
11. This timely appeal followed.
12. On November 16, 2021, appellant filed his 2015 federal income tax return reporting federal adjusted gross income of \$31,685.<sup>4</sup>
13. On March 28, 2022, the IRS reduced the tax assessed by \$33,147.

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<sup>2</sup> The lower reported tax amount appears to be the result of various claimed business-related expenses incurred by appellant for the 2015 tax year.

<sup>3</sup> R&TC section 19306(a) sets forth the general limitation 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.

<sup>4</sup> This amount is \$442 higher than what appellant had reported on the Return.

## DISCUSSION

The sole issue in this appeal is whether the amount of appellant's remaining \$5,482.37 overpayment may be refunded or credited. Appellant provides four separate arguments for why he is entitled to a refund or credit for this entire amount or some portion thereof.

### *Filing Date of Appellant's Refund Claim*

Appellant argues that the Return was first filed on December 14, 2020, and consequently, it was timely for all overpayments made within one year of this date, which appellant asserts should result in an additional refund of no less than \$5,169.87. In support, appellant provides an undated document entitled "Client Copy 2015," which was presumably received from his tax return preparer, stating that appellant's 2015 federal and California income tax returns were printed on December 14, 2020, and were ready for appellant's review. Appellant also provides an email dated April 13, 2022, from his then TAAP representative stating that she had contacted appellant's tax return preparer who recalled filing the Return by certified mail three times from February 12, 2021, through August 27, 2021.

A refund claim is timely if filed within one year from the date of overpayment. (R&TC, § 19306(a).) When sent via United States mail or through a bona fide commercial delivery service, a refund claim is generally considered to be filed on the date shown by the cancellation mark<sup>5</sup> stamped on the envelope containing it or on the date it was mailed if proof satisfactory to respondent establishes that the mailing occurred on an earlier date. (Gov. Code, § 11003; see also R&TC, § 21027.)

The evidence provided by appellant is insufficient to establish that the Return was mailed on December 14, 2020, or during the period February 12, 2021, through August 27, 2021. Evidence that the Return was printed for appellant's review on December 14, 2020, does not indicate that the Return was in fact mailed on that date. Moreover, the statements made by appellant's tax return preparer are wholly uncorroborated hearsay, and as such, OTA declines to give any weight to them.<sup>6</sup>

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<sup>5</sup> A cancellation mark is a mark applied to a postage stamp indicating that the stamp has been used.

<sup>6</sup> While the evidentiary rules contained in the California Evidence Code and California Code of Civil Procedure do not apply to proceedings before OTA, the panel may rely on the Evidence Code when evaluating the weight to give the evidence. (Cal. Code Regs., tit. 18, § 30214(f).)

The only credible evidence in the record pertaining to the filing date of the Return is a copy of the Return dated September 23, 2021. Although the cancellation mark stamped on the envelope in which the Return was enclosed is not in the evidentiary record, respondent's records indicate that it was received a reasonable time thereafter on September 27, 2021. These facts indicate that the Return was mailed, and therefore filed sometime between September 23, 2021, and September 27, 2021. The only payment falling within one year of this period is the \$959 transfer from appellant's 2020 tax year, which respondent has already credited.

Consequently, OTA rejects appellant's assertion that the Return was filed on December 14, 2020, and that an additional refund is warranted based on this earlier filing date.

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

R&TC section 19311 provides for a two-year limitation period for filing a refund claim based on changes or corrections made or allowed by the IRS. This limitation period begins to run from the date of the final federal determination. (R&TC, § 19311(a)(1), (2).) A federal determination is final as of "the date on which each adjustment or resolution resulting from an IRS examination is assessed pursuant to Internal Revenue Code section 6203." (R&TC, §§ 19311(a), 18622(d).)

Appellant argues that the Return was timely filed under the extended limitation period provided by R&TC section 19311 because the resulting overpayment was the result of a federal tax abatement which occurred on March 28, 2022.

As noted above, appellant filed the Return sometime in September 2021, which is prior to the March 28, 2022 federal tax abatement. Because the Return was filed months prior to this federal adjustment, the reduced tax liability reported therein could not have resulted from that federal adjustment. Rather, it appears appellant's refund claim was based upon the untimely filing of the Return claiming various business-related expenses which were previously not accounted for in respondent's assessment.

Accordingly, OTA finds that the statute of limitations provided for in R&TC section 19311 does not apply here.

*Overcollection*

According to respondent's Technical Advice Memorandum (TAM) 2007-01 (April 23, 2007), 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.) For example, payments collected by respondent through wage garnishments which exceed the amount owed are the result of an overcollection when caused by respondent's failure to notify the employer that the liability had been fully satisfied. (TAM 2007-01, EXAMPLE 1.) 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 totaling \$2,312.50 which respondent collected via wage garnishment should be refunded because they were the result of an overcollection by respondent, as evidenced by the fact that they exceeded appellant's final tax liability for the 2015 tax year and respondent, based on appellant's prior year tax returns, should have known that appellant's net income after expenses was substantially lower than the gross amounts reported as having been paid to appellant.

While these payments did exceed the final amount appellant owed, this fact does not demonstrate that they were the result of an overcollection. TAM 2007-01 expressly provides that respondent's collection "of amounts pursuant to a valid assessment will *never* result in an 'overcollection' situation." (Italics added.) EXAMPLE 4 of respondent's TAM 2007-01, which illustrates this point, further states:

The following are situations that do not constitute overcollection. Thus, the refunds are barred by the applicable statute of limitations. These situations involve overpayments that are a result of actions or mistakes by some party other than [respondent], and such overpayments are subject to the applicable statute of limitations. [Respondent] received income information indicating that taxpayer received \$60,005 in income during the 2005 tax year. When the taxpayer failed to file a return, [respondent] issued an assessment for \$3,164 in tax based on that income and pursued collection, completely satisfying the assessment. However, after the statute of limitations has expired, the taxpayer files a tax return indicating multiple deductions and credits, which was accepted by [respondent] and reduced the tax liability to \$2,000. The \$1,164 [respondent] collected over the final liability was not an overcollection. [Respondent] properly based the assessment on correct information. It was the taxpayer's failure to file a timely return that resulted in the overpayment, not a mistake by [respondent].

Appellant does not argue, nor is there any evidence of, a mathematical or clerical error by respondent. Rather, the record indicates that payments at issue were collected following a valid assessment made pursuant to R&TC section 19087(a), which specifies that where a return has

not been filed, respondent may, at any time, make an estimate of the taxpayer's net income from any available information and issue a proposed assessment of tax, interest, and penalties. In addition, similar to the above example, appellant's failure to report his claimed expenses prior to respondent's collection action, which he could have done by either by filing the Return or protesting the NPA, is the direct cause of the payments exceeding his final tax liability.

Accordingly, OTA finds that these payments were not the result of an overcollection by respondent.

### Equitable Considerations

Appellant further argues that it would be inequitable to allow respondent to retain appellant's overpayment because appellant is a senior citizen living on a limited fixed income and respondent made no effort to account for appellant's expenses in issuing its NPA and failed to notify appellant of the statute of limitations for making a refund claim.

There is no general reasonable cause or equitable exception for suspending the statute of limitations for making a refund claim. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The requirements of R&TC section 19306 must be strictly construed, meaning that except in very limited situations which are not present here,<sup>7</sup> a taxpayer's untimely filing of a claim for *any reason* bars a refund. (*Ibid.*) The purpose behind the statute of limitations for making a refund claim is so that the state may "evaluate the merits of the taxpayer's claim and to plan fiscal policy accordingly." (*Shiseido Cosmetics Ltd. v. Franchise Tax Bd.* (1991) 235 Cal.App.3d 478, 489.) "Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted." (*Appeal of Benemi Partners, L.P., supra.*)

Based on the foregoing, OTA finds appellant's equitable arguments to be unavailing.<sup>8</sup>

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<sup>7</sup> For instance, R&TC section 19316 provides for a narrow exception for suspending the statute of limitations 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.

<sup>8</sup> Respondent was not obligated to inform appellant of the limitation period for making a refund claim (see *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856), nor was respondent required to seek out expense deductions on appellant's behalf in reconstructing appellant's taxable income (see *DiLeo v. Commissioner* (1991) 96 T.C. 858, 872).

HOLDING

Appellant is not due an additional refund or credit for the 2015 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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*Veronica L. Long*  
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Veronica Long  
Administrative Law Judge

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Lissett Cervantes  
Senior Legal Typist, on behalf of  
Amanda Vassigh  
Administrative Law Judge

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