

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. CHU) OTA Case No. 240516174
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OPINION

Representing the Parties:

For Appellant: J. Chu

For Respondent: Jeffrey Gates, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Chu (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$2,286.89 and \$12,426.20 for the 2017 and 2018 tax years, respectively.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant is entitled to a refund or credit of his overpayments for the 2017 and 2018 tax years.

FACTUAL FINDINGS

1. Appellant did not file timely California income tax returns (Returns) for the 2017 and 2018 tax years.
2. FTB requested/demanded that appellant file his Returns for the 2017 and 2018 tax years.
3. Appellant did not respond to these requests/demands.
4. FTB issued Notices of Proposed Assessment (NPAs) to appellant for the 2017 and 2018 tax years for tax and other various charges based on an estimate of his income, which

- FTB computed by multiplying the personal mortgage interest paid by appellant as reported on IRS Form 1098, by a factor of six.
5. Appellant did not protest the NPAs and they became final (i.e., due and payable).
 6. On May 18, 2022, FTB received a payment which satisfied the balance due for the 2017 and 2018 tax years.
 7. On February 6, 2024, appellant late filed his 2017 and 2018 Returns in which he reported \$0 tax due and requested a refund of the payment previously made for these years.
 8. FTB processed the Returns and issued claim denial notices informing appellant that his overpayment for the 2017 and 2018 tax years could not be refunded or credited to him because his 2017 and 2018 Returns were filed outside the statute of limitations for making a refund claim.¹
 9. This timely appeal followed.

DISCUSSION

Appellant does not dispute that his 2017 and 2018 Returns were filed outside the general limitation period for making a refund claim.² Rather, appellant contends the statute of limitations is inapplicable here because FTB wrongfully levied his bank account in 2017, 2018, and 2019 based on an erroneous estimate of his tax liability. Appellant also requests that the claims be granted due to the fact he did not owe any tax for the years at issue.

The record reflects that appellant made only a single payment on May 18, 2022, which was credited to both the 2017 and 2018 tax years. Thus, any collection action taken against appellant by FTB during 2017, 2018, and 2019, does not pertain to the tax years at issue, and OTA lacks jurisdiction to address them.

Insofar as appellant argues that the statute of limitations does not apply to the May 18, 2022 payment, this position is without merit. OTA notes that it has long been FTB's position that the statute of limitations does not apply to amounts collected by FTB through an involuntary collection action, such as a lien or levy, that exceed the amount actually due under the law as the result of a clerical or mechanical error by FTB, which FTB refers to as an

¹ FTB computed a slightly different overpayment amount for the 2017 and 2018 tax years, which appellant does not dispute.

² The law generally requires that taxpayers file their refund claims by 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. (R&TC, § 19306(a).)

“overcollection.” (*Appeal of Cornbleth*, 2019-OTA-408P.) Although appellant’s 2017 account reflects a collection cost recovery fee, indicating the possibility of collection action by FTB, appellant’s 2018 account does not; nor is there any mention in the record that FTB took collection action against appellant for the 2017 or 2018 tax years. It is therefore unclear whether the May 18, 2022 payment was the result of a collection action by FTB.

However, even assuming that this payment was involuntary, it does not constitute an overcollection. According to *Appeal of Cornbleth, supra*, an amount collected by FTB pursuant to a valid assessment based on the information available to it at the time the assessment was made does not constitute an overcollection, even where it is later shown that the amount collected exceeds the actual tax due. In other words, there was no clerical or mechanical error by FTB in this case. Rather, the direct cause of the overpayment was appellant’s failure to respond to FTB prior to the May 18, 2022 payment, such as by filing his 2017 and 2018 Returns or protesting the NPAs. (See *Appeal of Cornbleth, supra*.)

Regarding appellant’s request that OTA grant his untimely claims for equitable reasons, the statute of limitations for filing a refund claim must be strictly construed, meaning that a taxpayer’s untimely filing of a refund claim for *any reason* bars a refund. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is true even if the tax was not owed in the first place or was erroneously, illegally, or wrongfully collected. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional unfairness is necessary to allow for a more workable tax system and is redeemed by the clarity imparted. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) While OTA is sympathetic to appellant’s situation, OTA lacks the authority to abrogate the statute of limitations to provide the equitable relief appellant seeks. (*Ibid.*)

HOLDING

Appellant is not entitled to a refund or credit of his overpayments for the 2017 and 2018 tax years.

DISPOSITION

FTB's actions are sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Signed by:
Veronica I. Long
32D46B0C49C949E
Veronica I. Long
Administrative Law Judge

Date Issued: 2/13/2025