

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240616391
R. MCCLURE)	
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OPINION

Representing the Parties:

For Appellant:	Kevin R. Kearney, CPA
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For Respondent:	Vicki M. Leclerc, Program Specialist
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For Office of Tax Appeals:	Nguyen Dang, Attorney
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K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. McClure (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$32,546.54 for the 2017 tax year.

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

ISSUE

Whether appellant is entitled to an additional refund or credit of his overpayment for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant did not timely file a 2017 California income tax return (Return).
2. After demanding but not receiving a Return from appellant, FTB issued a Notice of Proposed Assessment (NPA) to appellant for tax and various other charges, based on an estimate of appellant's income using amounts reported on IRS Form 1099-MISC, as having been paid to appellant by various third parties.
3. Appellant did not protest the NPA and it became final (i.e., due and payable).

4. FTB began collection action against appellant and received eight payments totaling \$53,742.01, which were credited on various dates between June 14, 2021, and November 15, 2023.
5. On February 26, 2024, appellant filed the Return reporting a tax due of \$92.
6. FTB accepted appellant's reported tax due amount.
7. Treating the Return as a refund claim, FTB credited \$20,985.25¹ of appellant's overpayment for the 2017 tax year to appellant's 2018 tax year account.
8. FTB did not refund or credit appellant's remaining \$32,546.54 overpayment because it determined that the Return had been filed outside the statute of limitations period for making a refund claim.
9. FTB issued a claim denial notice to appellant, from which appellant timely appeals.

DISCUSSION

Appellant does not dispute that the refund claim was untimely filed.² Rather, appellant takes issue with FTB's deficiency assessment, asserting that FTB failed to accurately account for appellant's numerous expenses in estimating appellant's taxable income, despite information relating to appellant's expenses being readily available to it. Appellant also alleges that FTB failed to offer him any assistance in paying the deficiency assessment (e.g., by modifying or releasing a garnishment or levy or placing a hold on its collection activity), which FTB announced it would do for taxpayers during the COVID-19 pandemic.

Here, FTB accepted appellant's reported tax liability which renders the reasonableness or validity of FTB's assessment a moot issue; in other words, the amount of appellant's overpayment is not at issue because both parties are in agreement. The sole issue to be decided is whether there is a legal basis for the overpayment to be refunded or credited to appellant. To the extent appellant argues that FTB's action or inaction caused the overpayment and that his untimely refund claim should be granted on this basis, the cause of appellant's

¹ This amount represents the payments made within one year of the filing of the Return, plus applicable interest.

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).)

overpayment is irrelevant to the disposition of this appeal.³ FTB argues that the overpayment is barred by the statute of limitations.

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.) It is not in dispute that the Return was filed outside of the statute of limitations; appellant has not provided a legal basis to otherwise return or credit the overpayment. Therefore, the claim for refund is denied.

HOLDING

Appellant is not entitled to an additional refund or credit of his overpayment for the 2017 tax year.

DISPOSITION

FTB's action is sustained.

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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

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Veronica I. Long
Administrative Law Judge

Date Issued: 2/26/2025

³ Appellant also neglects to consider that his failure to respond to FTB's demand, the NPA, or the collection notices which followed was a significant factor in FTB assessing and collecting more than the actual amount due.