



3. On December 22, 2023, appellants late filed their 2015 joint California income tax Return (Return) reporting \$0 taxable income and requesting a refund of their \$114,086 withholding credit.<sup>1</sup>
4. FTB processed the Return and after accounting for various other charges and payments determined that appellants had an overpayment of \$114,117.68.
5. FTB credited a portion of the overpayment to appellants' 2022 tax year.
6. FTB did not refund or credit the remaining \$113,779 of appellants' overpayment because the Return was filed outside the limitation period for making a refund claim.
7. FTB issued a claim denial notice from which appellants timely appeal.

### DISCUSSION

The sole issue to be decided is whether appellants' withholding is a "payment" or "deposit." If appellants' withholding credit is considered a payment (as FTB has determined), then appellants, who owed no tax for the 2015 tax year, would have an "overpayment" for that year. An overpayment may be refunded to a taxpayer, but only on the condition that a claim for refund is filed no later than: (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).)

The statute of limitations pertaining to refund claims, however, does not apply to deposits. (R&TC, § 19041.5(a) [incorporating with some modifications Internal Revenue Code section 6603].) A deposit is a remittance, similar in nature to a cash bond, made to FTB to stop the accrual of interest on a potential underpayment of tax which has not yet been assessed. (*Ibid.*) To the extent that a deposit is not converted to a payment by the taxpayer or used by FTB to pay a final tax liability, it may be returned to the taxpayer upon written request. (*Ibid.*)

Appellants characterize their \$114,086 withholding credit as a deposit and ask that it be returned to them.<sup>2</sup> According to appellants, their withholding credit "can only be considered a

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<sup>1</sup> Appellants' withholdings were erroneously reported as estimated tax payments on the return.

<sup>2</sup> It is unclear whether OTA has the authority to provide the relief appellants seek. OTA's jurisdiction in this matter is limited to determining the propriety of FTB's denial of appellants' refund claim, which presupposes that appellants' withholding credit resulted in an overpayment of tax. (See Cal. Code Regs., tit. 18, § 30103(a)(3).) Regardless, OTA need not address this issue because, as discussed below, appellants' withholding credit is not a deposit.

deposit under the law” because appellants had no tax liability for the 2015 tax year.<sup>3</sup> Appellants do not dispute that their refund claim was untimely filed. Consequently, if appellants’ withholding credit is deemed to be an overpayment, it cannot be refunded to them.

R&TC sections 19002 and 19354 govern the treatment of withholdings. R&TC section 19002(a) specifies that withholdings “shall be allowed as a credit against the tax for the taxable year with respect to which the amount was withheld.” R&TC section 19002(d)(1) further provides that “[f]or purposes of computing the statute of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return.” Where a statute directs that remittances, such as withholdings or estimated taxes, are deemed paid on a specified date, the remittance is properly treated as a payment. (*Baral v. U.S.* (2000) 528 U.S. 431, 437-438.) In addition, to the extent that a withholding credit exceeds the tax due, as occurred here, the law requires that it be treated as an overpayment. (R&TC, § 19354; see also R&TC, § 19002(d)(1).)

For the foregoing reasons, appellants’ withholding credit is considered a payment subject to the statute of limitations for refund claims. Appellants’ refund claim was untimely filed, and consequently, it must be denied. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P [the untimely filing of a refund claim for any reason bars a refund].)

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<sup>3</sup> Appellants cite *Rosenman v. U.S.* (1945) 323 U.S. 658 (*Rosenman*), as support. *Rosenman* first established the concept of a tax deposit by recognizing that a remittance made prior to the assessment of a deficiency was not a payment subject to the statute of limitations for refund claims. Tax deposits have since been codified in Internal Revenue Code section 6603, which was enacted as part of the American Jobs Creation Act of 2004 (Pub.L. No. 108-357 (October 22, 2004), 108th Congress).

HOLDING

Appellants' withholding credit is a payment.

DISPOSITION

FTB's action is sustained.

Signed by:

*Veronica I. Long*

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Veronica I. Long  
Administrative Law Judge

We concur:

DocuSigned by:

*Sara A. Hosey*

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Sara A. Hosey  
Administrative Law Judge

DocuSigned by:

*Kenneth Gast*

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Kenneth Gast  
Administrative Law Judge

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