

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 231214840
J. RIBICIC AND	)	
E. RIBICIC	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellants:	Chase Canevari
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For Respondent:	Vivian Ho, Attorney
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For Office of Tax Appeals:	Neha Garner, Attorney
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T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ribicic and E. Ribicic (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$5,837 for the 2021 tax year.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record. (See Cal. Code Regs., tit. 18, § 30209(a).)

ISSUE

Whether the Office of Tax Appeals (OTA) has jurisdiction over appellants' appeal of FTB's denial of their claim for refund.

FACTUAL FINDINGS

1. On October 31, 2022, appellants made an extension payment of \$75,000 for the 2021 tax year. On June 5, 2023, appellants filed their 2021 California tax return (Form 540) reporting total tax of \$69,388 and \$75,255 in total payments, which included the extension payment of \$75,000 and a withholding payment of \$225. Hence, appellants' 2021 Form 540 showed an overpayment of \$5,837.
2. On June 19, 2023, FTB imposed a late filing penalty of \$17,290.75 plus interest. After applying appellants' reported overpayment of \$5,837, appellants had a remaining balance due of \$13,249.06. FTB reported no additional payments made towards appellants' outstanding balance.

3. On August 28, 2023, appellants requested a waiver of the late filing penalty and interest. On the same day, FTB sent appellants a Claim for Refund denial notice stating that neither the late filing penalty nor the interest would be waived, which appellants appealed.

DISCUSSION

Under the California Constitution, unless the Legislature so provides, prepayment review of the validity of a refund claim is prohibited.¹ See also R&TC, §§ 19382 and 19385, *State Board of Equalization v. Superior Court* (1985) 39 Cal.3d 633.

OTA has jurisdiction where FTB mails a notice of action on cancellation, credit or refund, or any other notice which denies any portion of a “perfected” claim for refund of tax, penalties, fees, or interest. (Cal. Code Regs., tit. 18, § 30103(a)(3).) A claim for refund of tax is “perfected” when it is in writing, signed by the taxpayer or authorized representative, and states the specific grounds upon which it is founded. (R&TC, § 19322.) A claim that is filed prior to the payment of “the entire tax² assessed or asserted” is a claim only for purposes of extending the time period for timely filing a claim, and does not give rise to appeal rights to OTA. While there are jurisdictional grounds to challenge the proposed assessment of tax before payment at OTA,³ to have jurisdiction as it relates to a refund claim the claim must be “perfected” which requires full payment. (R&TC, § 19322.1; see also R&TC, § 19324(a).) To perfect the refund claim with respect to amounts that are due and payable, i.e., billable, as in the present appeal, all amounts due, including tax, penalty, and interest, must be paid.

In this appeal, FTB's Tax Year Detail indicates that appellants owe a balance of \$13,249.06 for 2021 and have not made any payments towards the balance since FTB imposed a late filing penalty on June 19, 2023.⁴ Appellants are seeking a claim for refund based on

¹ California Constitution, Article 13, Taxation, Section 32 provides: “No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. *After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.*” (Emphasis added.) The Legislature did so provide by enacting Chapter 6 of Part 10.2 of the R&TC. (See e.g., R&TC, § 19306.)

² The late filing penalty is an addition to tax and is included in the “entire tax” amount referenced in R&TC section 19322.1. (See R&TC, § 19131; see also Int.Rev. Code, § 6665, incorporated by R&TC section 19164(g).) The same holds true for interest. (R&TC, § 19101(c).)

³ OTA has jurisdiction over an FTB notice of action on a proposed deficiency assessment of additional tax which does not require the pre-payment of tax. (Cal. Code Regs., tit. 18, § 30103(a)(1).)

⁴ FTB states that it inadvertently issued a claim for refund denial letter to appellants, and that the law does not provide any exception to the full payment requirement for jurisdiction.

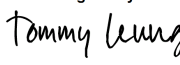
abatement of the late filing penalty and interest without paying this outstanding balance. Therefore, appellants claim for refund has not been perfected. Without a perfected claim for refund, OTA does not have jurisdiction over appellants' appeal of FTB's denial of that claim. (See *Shiseido Cosmetics (America) Ltd. v. Franchise Tax Bd.* (1991) 235 Cal.App.3d 478; *Appeal of Carr*, 2022-OTA-157P.)

HOLDING

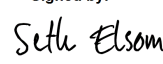
OTA does not have jurisdiction over appellants' appeal. Because OTA lacks jurisdiction to decide this appeal, no opinion is expressed regarding FTB's imposition of the late filing penalty and interest.⁵

DISPOSITION

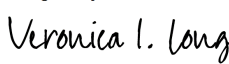
This appeal is dismissed for lack of jurisdiction.

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Tommy Leung
Administrative Law Judge

We concur:
Signed by:

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Seth Elsom
Hearing Officer

Signed by:

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Veronica I. Long
Administrative Law Judge

Date Issued: 7/24/2025

⁵ Appellants submitted an unsolicited exhibit on June 3, 2025, containing a reasonable cause argument they made to the IRS. Because this appeal is being dismissed for lack of jurisdiction, there was no need for the opinion to discuss this exhibit.