



- proposed assessment of \$6,820.78. Appellant did not timely protest the NPA by February 15, 2022, and the assessment became final.
4. FTB issued a State Income Tax Balance Due Notice on March 14, 2022, for \$6,869.02.
  5. Through FTB's collection efforts, FTB received the following payments totaling \$9,512.54: March 15, 2022, \$110; April 15, 2022, \$110; September 26, 2022, \$546.15; October 3, 2022, \$50; October 11, 2022, \$50; October 15, 2022, \$100; August 7, 2023, \$383.80; August 14, 2023, \$383.80; August 28, 2023, \$383.80; September 5, 2023, \$383.80; September 7, 2023, \$2,457.76; September 11, 2023, \$3,402.03 and \$383.80; September 15, 2023, \$383.80; and September 25, 2023, \$383.80.<sup>1</sup>
  6. On October 7, 2024, FTB received appellant's 2019 tax return reporting total tax of \$351, withholdings of \$419, and an overpayment of \$68. FTB accepted appellant's return as a claim for refund.
  7. FTB reviewed appellant's return and recalculated a demand penalty of \$87.75 based on tax of \$351, removed the late filing penalty of \$1,056.25 and filing enforcement fee of \$97, added a collection cost recovery fee of \$316, and a transfer of payment (TOP) fee of \$23.64.
  8. On October 22, 2024, FTB issued a Statute of Limitations letter denying appellant's claim for refund in the amount of \$9,153.01.
  9. This timely appeal follows.
  10. On appeal, FTB now concedes that there was an overcollection of \$1,915.35 which FTB has agreed to refund to appellant.

### DISCUSSION

If it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer bears the burden of proving

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<sup>1</sup> The September 7, 2023 payment was a treasury offset payment (TOP) for \$2,457.76. The September 11, 2023 payments of \$3,402.03 (transfer from tax year 2022) and \$383.80 paid off the balance due and created an overcollection balance of \$1,487.39. On September 15, 2023, FTB added a TOP fee of \$23.64 and collected another payment of \$383.80 from appellant, resulting in an overcollection balance as of September 15, 2023, of \$1,847.55 (September 11, 2023 overcollection balance of \$1,487.39 - \$23.64 TOP fee + \$383.80 additional amount collected = \$1,847.55). FTB collected an additional payment of \$383.80 on September 25, 2023, and imposed collection cost recovery fee of \$316, resulting in a total overcollection of \$1,915.35 for appellant's 2019 tax year (September 15, 2023 overcollection balance \$1,847.55 + \$383.80 additional amount collected - \$316 collection cost recovery fee = \$1,915.35).

entitlement to any refund. (*Appeal of Cornbleth*, 2019-OTA-408P.) The statute of limitations provides, in relevant part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the date the return was due, determined without regard to any extension of time to file; or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer has the burden of proving that the claim for refund was timely and that the taxpayer is entitled to the refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is no reasonable cause exception or equitable basis for suspending the statute of limitations. (*Ibid.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.) Neither ill health of a taxpayer nor any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund. (*Appeal of Gillespie, supra.*) Although there is a statutory exception for financial disability, appellant has not asserted or established that this exception applies in this appeal.<sup>2</sup> While the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P., supra.*)

Appellant's refund is barred by the statute of limitations because it was not filed within the time limitations set forth in R&TC section 19306. The first four-year statute of limitations period is not applicable because appellant did not timely file a 2019 return subject to a valid extension. (R&TC, § 19306.) The second four-year statute of limitations period expired on April 15, 2024, because appellant's 2019 return was originally due on April 15, 2020. (R&TC, §§ 19306, 18566.) Appellant filed his refund claim on October 7, 2024, which is after April 15, 2024.

The one-year statute of limitations period runs one year from the date of payment. Appellant filed a refund claim dated October 7, 2024, which is more than one year after all

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<sup>2</sup> For purposes of the Personal Income Tax Law, the statute of limitations may be tolled under certain circumstances during any period for which an individual taxpayer establishes a financial disability, which means that 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. (R&TC, § 19316(a),(b).)

payments applied to the 2019 tax return.<sup>3</sup> Accordingly, appellant's claim for refund is barred by the statute of limitations.

As relevant to this appeal, the law distinguishes between two types of payments resulting from FTB's involuntary collection actions (e.g., liens, levies, or withholding orders); "overpayments," which are subject to the provisions of R&TC section 19306(a), and "overcollections," which may be returned to the taxpayer after the statute of limitations for claiming a refund has expired. "[T]here is a narrow exception where the statute of limitations provisions do not apply to the return of payments that exceed what FTB is legally allowed to collect and were the result of 'overcollection.' An 'overcollection' occurs when the amount collected exceeds the amount actually due under the law as the result of clerical or mechanical error." (*Appeal of Cornbleth, supra.*)

FTB concedes that appellant's account balance of \$8,016.19 was fully satisfied on September 11, 2023, creating an overcollection balance of \$1,487.39 on appellant's 2019 tax account as of that date. After reducing appellant's payments by the TOP fee of \$23.64 and collection cost recovery fee of \$316 and considering the additional collections of \$383.80 on both September 15, 2023, and September 25, 2023, the total overcollection amount for 2019 totals \$1,915.35. These payments were collected by FTB after the total liability per the NPA was fully satisfied. FTB concedes that this amount was over collected from appellant and agrees to refund this amount to appellant.

Appellant contends that he should be entitled to the full amount of the claim for refund, \$9,153.01, due to extenuating personal circumstances. As stated above, there is no reasonable cause exception for suspending the statute of limitations and generally appellant's unfortunate circumstance cannot extend the statute of limitations for filing a claim for refund. (*See Appeal of Benemi Partners, L.P.; Appeal of Estate of Gillespie, supra.*)

Further, appellant asserts that only \$778.53 was legally owed and any amounts collected beyond this amount were "overcollections" which should be return to him even though the statute of limitations had expired. This is incorrect. Because appellant failed to timely file a return, FTB was legally permitted to estimate his income and proposed tax based on that estimate of income. (See R&TC section 19087 [if a taxpayer fails to file a return, FTB at any time "may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest and penalties due".]) FTB was legally permitted to issue an NPA estimating appellant's income and proposing the resulting amount of tax, interest,

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<sup>3</sup> Appellant's final payment for the 2019 tax year was applied on September 25, 2023.

and penalties due. FTB was also permitted to collect on the resulting balance due when the NPA became final as a result of appellant’s failure to timely protest the NPA. (See, R&TC, § 19042 [if no protest is filed, the amount of the proposed deficiency assessment becomes final upon the expiration of the 60-day protest period].) FTB’s collection of tax, penalties, fees, and interest resulting from its NPA (when the NPA became final) is not an overcollection. FTB was legally permitted to collect this amount where appellant failed to file a return reporting the correct amount of tax. Only those amounts collected in excess of the tax, interest, penalties, and fees resulting from the proposed assessment are an overcollection.

HOLDING

As conceded by FTB, \$1,915.35 of appellant’s claim for refund was an overcollection which is not subject to the statute of limitations. Appellant’s remaining claim for refund is barred by the statute of limitations.

DISPOSITION

FTB’s action is modified as conceded by FTB to allow \$1,915.35 of appellant’s claim for refund. FTB’s action denying appellant’s claim for refund is otherwise sustained.

Signed by:  
*Kim Wilson*  
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Kim Wilson  
Hearing Officer

We concur:

Signed by:  
*Veronica I. Long*  
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\_\_\_\_\_  
Veronica I. Long  
Administrative Law Judge

Signed by:  
*Josh Lambert*  
CB1E7DA37831416  
\_\_\_\_\_  
Josh Lambert  
Administrative Law Judge

Date Issued: 9/18/2025