

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 21088516
P. VAN DER ZEE)	
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OPINION

Representing the Parties:

For Appellant:	Thomas Michel, Tax Appeals Assistance Program (TAAP) Student Representative ¹
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For Respondent:	Nancy E. Parker, Attorney
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V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Van der Zee (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$8,433.98 for the 2015 tax year and \$43,853.15 for the 2017 tax year.

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's 2015 and 2017 claims for refund are barred by the statute of limitations.

FACTUAL FINDINGS

2015 Tax Year

1. Appellant did not timely file a 2015 California income tax return (2015 Return).

¹ P. Van der Zee filed his opening brief. TAAP student representative Arish Gill filed appellant's first reply brief. TAAP student representative Stephen Wilson filed appellant's second reply brief. TAAP student representative Justin Behnam filed appellant's third reply brief. TAAP student representative Na Yeon Kim filed appellant's fourth reply brief. TAAP student representative Thomas Michel filed appellant's fifth and sixth reply briefs.

2. Through its Integrated Non-Filer Compliance (INC) program, FTB obtained third-party information returns (e.g., IRS Form 1099-MISC) indicating that appellant received income sufficient to require the filing of a 2015 Return.
3. After demanding but not receiving a 2015 Return from appellant, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2015 tax year proposing tax, a late-filing penalty, a demand penalty, a filing enforcement fee, and applicable interest, based on an estimate of appellant's income using the information obtained through the INC program.
4. Appellant did not protest the NPA, and it became due and payable.
5. From November 6, 2017, through August 31, 2018, appellant made payments on his 2015 tax account.
6. Appellant filed his 2015 Return as married filing joint and reported zero tax due. FTB accepted appellant's 2015 Return as filed and treated it as a claim for refund in the amount of \$8,433.98. FTB determined that appellant's claim for refund was untimely under the statute of limitations and denied the claim.
7. This timely appeal followed.

2017 Tax Year

8. Appellant did not timely file a 2017 California income tax return (2017 Return).
9. Through its INC program, FTB obtained third-party information returns (IRS Forms 1098) indicating that appellant paid mortgage interest on a property located in California in 2017. The mortgage interest information indicated to FTB that appellant may have a 2017 California filing requirement.
10. After demanding but not receiving a 2017 Return from appellant, FTB issued an NPA to appellant for the 2017 tax year proposing tax, a late-filing penalty, a demand penalty, a filing enforcement fee, and applicable interest. The NPA used an estimate of appellant's income based on statistical information obtained from an analysis of tax returns filed by California residents. FTB estimated appellant's gross income for the 2017 tax year to be six times the mortgage interest he paid for the year.
11. Appellant did not protest the NPA, and it became due and payable.
12. Appellant's withholdings were credited on April 15, 2018. On March 9, 2021, and July 2, 2021, FTB received payments from appellant pursuant to collection action.
13. On September 15, 2021, FTB received an additional payment of \$1,815.90 from the IRS on appellant's 2017 account.

14. On September 9, 2022, appellant filed his 2017 Return as married filing joint and reported zero tax due. FTB accepted appellant's 2017 Return as filed and treated it as a claim for refund. FTB transferred \$1,818.74² to appellant's 2018 tax balance but determined that appellant's remaining claim for refund of \$43,853.15 was untimely under the statute of limitations and denied the claim.
15. This timely appeal followed.

DISCUSSION

Although appellant does not dispute that his 2015 and 2017 Returns were untimely under the general statute of limitations,³ he contends that: the remittances were refundable overpayments; FTB had a duty to consider his net operating losses (NOLs) in its estimation of his income in computing the NPAs; and he was financially disabled such that the statute of limitations should be tolled for his claims for refund for both tax years.

Taxpayers bear the burden of proving, by a preponderance of evidence, that a refund claim was timely filed, and the untimely filing of a claim for any reason bars a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) 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).) 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 "overcollection." (*Appeal of Cornbleth*, 2019-OTA-408P (*Cornbleth*).)

The running of the statute of limitations may be suspended during any period where a taxpayer is "financially disabled." A taxpayer is financially disabled if he or she 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(b)(1).) A taxpayer shall not be considered financially disabled for any period during which that taxpayer's spouse or any other

² This amount is comprised of the \$1,815.90 federal offset payment plus \$9.75 of allowed interest.

³ 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).)

person is legally authorized to act on that individual's behalf in financial matters. (R&TC, § 19316(b)(2).) To prove financial disability, a taxpayer must, at a minimum, provide a physician's affidavit which contains a description of the taxpayer's physical or mental impairment and the period of disability. (*Appeal of Estate of Gillespie, supra.*)

Overpayment

Appellant contends the payments he made to FTB for the 2015 tax year and the payments FTB received pursuant to collection action for the 2017 tax year constitute overpayments which should be refunded to appellant.

OTA has held that 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. (*Cornbleth, supra.*) Appellant contends that *Cornbleth* is inapplicable to this appeal because in that case OTA held that a remittance was not the result of collection action where a third-party payor remitted funds to FTB on the appellant's behalf prior to the issuance of an NPA. Appellant asserts that his appeal is distinguishable on the basis that for 2015, appellant made payments only after receiving notices from FTB and for 2017, payments were received pursuant to collection action.

Appellant's contention that his payments constitute an overcollection is without merit. At the outset, appellant's voluntary payments cannot constitute an overcollection because no "collection" occurred. As to the amounts collected for 2017, "overcollection" refers to amounts collected by FTB that exceed the amount actually due as the result of a mechanical or clerical error. (*Cornbleth, supra*; see *Brennan v. Southwest Airlines Co.* (9th Cir. 1998) 134 F.3d 1405, 1414.) 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. (*Cornbleth, supra.*) The record does not reflect that FTB made a clerical or mechanical error. Rather, the direct cause of the overpayments was appellant's failure to respond to FTB's notices, such as by filing his 2015 and 2017 Returns or protesting the NPAs.

Estimations of Income

Appellant contends that in computing the amount of tax proposed, FTB failed to take into account NOLs available to appellant, which resulted in an overestimation of his tax liability. However, 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, supra.*)

Financial Disability

Appellant argues that the statute of limitations to file his claims for refund should be tolled due to his financial disability. In support of his claim, appellant submits an affidavit from a nurse practitioner stating that he was unable to manage his financial affairs from 2012 through 2020. Appellant contends that, although his 2015 and 2017 returns were ultimately filed as married filing jointly, his spouse was not authorized to prepare the returns and because she was not involved in appellant's business, she lacked the knowledge and ability to handle appellant's financial matters.

To be successful in his claims for refund, appellant must establish entitlement to the claims by a preponderance of evidence, and unsupported assertions are not sufficient to satisfy this burden of proof. (*Appeal of Gillespie, supra; Appeal of Mauritzson*, 2021-OTA-198P.) A taxpayer shall not be considered financially disabled for any period during which that taxpayer's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. (R&TC, § 19316(b)(2).) Taxpayers filing as married filing jointly are jointly and severally liable for the contents of a return, and appellant has not provided evidence demonstrating that his spouse was unable to act on his behalf. Accordingly, appellant has not demonstrated entitlement to tolling of the statute of limitations on the basis of financial disability, and his claim for refund must be denied.


HOLDING

Appellant's 2015 and 2017 claims for refund are barred by the statute of limitations.

DISPOSITION

FTB's actions are sustained.

Signed by:



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Veronica I. Long
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:



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Tommy Leung
Administrative Law Judge

Date Issued: 5/7/2025