

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22039964
)
G. HYATT)
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OPINION

Representing the Parties:

For Appellant:

Matthew Carlson, Attorney
Robert Rubin, Attorney

For Respondent:

Noel Garcia-Rosenblum, Attorney
Bradley Coutinho, Assistant Chief Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Hyatt (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$11,372,224 for the 1991 tax year.

Office of Tax Appeals (OTA) Panel Members Huy "Mike" Le, Josh Aldrich, and Cheryl L. Akin held an oral hearing for this matter in Sacramento, California on April 21, 2026. At the conclusion of the hearing, the record was closed and submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUE¹

Whether R&TC section 19777.5(e) bars a taxpayer from challenging the post-amnesty penalty on the ground that FTB failed to obtain written supervisory approval under R&TC section 19187(b).

¹ During the briefing process, the parties addressed three main issues: (1) whether sourcing is barred by the doctrine of res judicata; (2) whether OTA has jurisdiction to review the post-amnesty penalty imposed under R&TC section 19777.5; and (3) whether appellant has established a basis to abate interest accrued pursuant to R&TC section 19104(b)(4). Regarding the first issue, appellant agrees that sourcing is precluded from consideration in this proceeding by virtue of res judicata. (*Appeal of Millennium Dental Technologies, Inc.*, 2019-OTA-178P.) As such, this issue is now moot. Regarding the third issue, FTB agrees to abate interest from April 12, 2019, through November 14, 2019, and appellant agrees with this. Therefore, this Opinion will only address the second issue.

FACTUAL FINDINGS

1. Appellant filed a timely appeal with the Board of Equalization for the 1991 tax year. The Board of Equalization considered multiple issues and reversed FTB's proposed assessment in part and sustained it in part.
2. FTB then filed a timely petition for rehearing before OTA. OTA issued an Opinion that concluded that FTB did not satisfy the requirements for obtaining a rehearing.
3. Later, FTB issued a Notice of Determination on Appeal, which, among other adjustments, imposed a post-amnesty penalty of \$1,575,731.83.²
4. Appellant subsequently remitted payment that satisfied his outstanding balance for the 1991 tax year.
5. Appellant filed a timely claim for refund and/or credit for the 1991 tax year.
6. FTB denied the claim.
7. This timely appeal followed.
8. During this appeal, the parties made concessions. (See footnote 1.) In summary, FTB agrees to abate interest for the period April 12, 2019, through November 14, 2019, and appellant agrees that the sourcing issue is barred by res judicata. As a result, the sole remaining issue is the post-amnesty penalty.³

DISCUSSION

OTA has jurisdiction to hear and decide an appeal when, among other circumstances, "FTB mails a notice of action on cancellation, credit or refund, or any other notice which denies any portion of a perfected claim for a refund of tax, penalties, fees, or interest." (Cal. Code Regs., tit. 18, § 30103(a)(3).) An appeal from a refund claim denial is timely if the taxpayer appeals in writing to OTA within 90 days from the date FTB mails the denial notice. (R&TC, § 19324; Cal. Code Regs., tit. 18, § 30203(a)(2).) Once OTA has jurisdiction over an appeal, it must act within powers conferred on it by law and may not validly act in excess of such powers. (*Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 104.)

In 2004, the California Legislature enacted the income tax amnesty program for taxpayers subject to the Personal Income Tax Law and the Corporation Tax Law. (R&TC, §§ 19730–19738.) Eligible taxpayers could participate by filing an amnesty application and

² Appellant did not participate in the amnesty program.

³ During this appeal, OTA previously granted FTB's motion to sever the sourcing/res judicata issue. Because this issue is no longer in dispute, OTA has reversed its prior decision to sever pursuant to Regulation section 30212.1(c).

paying their outstanding liabilities of tax and interest, or by entering into an installment plan during the period of February 1, 2005, through March 31, 2005, inclusive. (R&TC, §§ 19730, 19731, 19733.) The amnesty program applied to tax liabilities for tax years beginning before January 1, 2003. (R&TC, § 19731.) If an eligible taxpayer paid in full the tax obligations and met all the other requirements of the amnesty program, FTB waived all unpaid penalties and fees imposed, and no criminal action would be brought against the taxpayer for years subject to the amnesty program. (R&TC, §§ 19732, 19733.)

However, if a taxpayer underpaid its taxes for tax years beginning prior to January 1, 2003, and did not take part in the amnesty program, R&TC section 19777.5 imposes a post-amnesty penalty. Pursuant to R&TC section 19777.5(a)(1), a 50 percent interest-based amnesty penalty applied to a taxpayer's past due liabilities if the liabilities were eligible for the 2005 amnesty program, but the taxpayer did not participate in that program. The penalty is equal to 50 percent of the interest that accrued on the balance due from the original payment due date of the tax to March 31, 2005. (R&TC, § 19777.5(a)(1).) Under R&TC section 19777.5(d), the taxpayer has no right to an administrative protest or appeal of an unpaid post-amnesty penalty. (R&TC, § 19777.5(d).) In addition, under R&TC section 19777.5(e)(2), once a post-amnesty penalty is assessed as a final liability and has been paid, a taxpayer may file a refund claim only on the limited grounds that the amount paid to satisfy the penalty "was not properly computed by [FTB]."

Here, appellant did not participate in the amnesty program. After OTA issued an Opinion on Petition for Rehearing for this matter, FTB issued a Notice of Determination on Appeal, which imposed a post-amnesty penalty. Appellant paid the outstanding balance, then filed a claim for refund. FTB denied the claim, and appellant filed a timely appeal, giving OTA jurisdiction.

On appeal, appellant argues that FTB violated R&TC section 19187(b) by failing to obtain written supervisory approval before imposing the post-amnesty penalty. Appellant further contends that R&TC section 19187(b) "trumps" R&TC section 19777.5(e), and that R&TC section 19187(b) should be treated as an exception to R&TC section 19777.5(e).

R&TC section 19187(b) is a provision requiring written supervisory approval before various penalties are imposed. It applies broadly across many penalties administered by FTB and does not specifically reference the post-amnesty penalty.⁴ By contrast, R&TC

⁴ R&TC section 19187 also provides exceptions to the supervisory approval requirement, including that any penalty automatically calculated through electronic means does not need supervisor approval. (R&TC, § 19187(b)(2)(B).)

section 19777.5 is a specific statute governing a single penalty—the post-amnesty penalty. As previously noted, it strictly limits refund claims and expressly states that “a taxpayer may not file a claim for refund or credit” of the post-amnesty penalty except on the ground that the amount of the penalty “was not properly computed by [FTB].” (R&TC, § 19777.5(e).)

This restriction does not directly curtail OTA’s jurisdiction; rather, it defines the scope of issues that a taxpayer may raise in a refund claim. Because OTA’s jurisdiction in a refund appeal is derived from the refund claim that the taxpayer is legally permitted to file, R&TC section 19777.5(e)’s limitation on refund claims necessarily restricts the issues that OTA may consider on appeal. Accordingly, R&TC section 19777.5(e) establishes the exclusive basis for challenging the post-amnesty penalty and, in turn, limits OTA’s authority in these matters to reviewing whether FTB properly computed the penalty.⁵ Given this framework, because R&TC section 19777.5(e) restricts refund claims to computation errors only, it necessarily excludes challenges based on the lack of written supervisory approval under R&TC section 19187(b).

Where the statutory text is clear and unambiguous, it is presumed the Legislature meant what it said, and the plain meaning controls. (See *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.) If a statute is found to be ambiguous, then OTA may look to “extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.” (*Ibid.*) Here, however, no such ambiguity exists. The plain language of R&TC section 19777.5(e) clearly limits refund claims to computational errors.⁶

To the extent there is tension between the general supervisory approval requirement in R&TC section 19187(b)(1) and the specific provision governing the post-amnesty penalty in R&TC section 19777.5(e), or there is ambiguity because of the interplay of these two statutes, the latter specific provision controls. “It is well settled . . . that a general provision is controlled

⁵ FTB asserts that appellant’s due process rights have not been violated, in part, because “R&TC section 19382 offers appellant the ability to bring a suit for a tax refund following payment.” OTA, however, declines to opine on what actions appellant may or may not pursue once this appeal is final. In addition, appellant asserts constitutional violation arguments but OTA lacks jurisdiction to consider these arguments. (*Appeal of Talavera*, 2020-OTA-022P, citing Cal. Const., art. III, § 3.5.)

⁶ R&TC section 19777.5(d) prevents taxpayers from bringing pre-payment protest or appeal challenges of the post-amnesty penalty. R&TC section 19777.5(e)(1) and (2) then prevent taxpayers from filing a claim for refund for any amounts paid in connection with the post-amnesty penalty, except on the “grounds that the amount of the penalty was not properly computed.” R&TC section 19777.5(e)(1) begins by stating that “[n]otwithstanding Chapter 6 (commencing with [R&TC] [s]ection 19301),” which makes clear that despite the fact that the taxpayer would otherwise be permitted to challenge the post-amnesty penalty in a claim for refund on any legally relevant basis pursuant to Chapter 6 of Part 10.2, a claim for refund of the post-amnesty penalty is only permitted on the basis that the amount was not properly computed, as provided under R&TC section 19777(e)(2), and no other exception is listed.

by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.” (*San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 577, citing *Rose v. State* (1942) 19 Cal.2d 713, 723-724.)

Additionally, even if R&TC sections 19777.5(e) and 19187(b)(1) were found to be conflicting and irreconcilable, it is well established that “[i]f conflicting statutes cannot be reconciled, later enactments supersede earlier ones” (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960.) OTA notes that R&TC section 19777.5 was enacted in 2004, while R&TC section 19187 was enacted in 1999. Presumably, in enacting R&TC section 19777.5, the Legislature was aware of existing laws (including R&TC section 19187) and intended to maintain a consistent body of rules. (See *People v. Superior Court* (2000) 23 Cal.4th 183, 184.) Despite the existence of the supervisor approval requirement in R&TC section 19187(b)(1), R&TC section 19777.5(e) expressly limits the scope of the taxpayer’s challenge of the post-amnesty penalty to the calculation only, suggesting that the Legislature did not intend to permit taxpayers to contest the post-amnesty penalty on the basis of the failure to obtain supervisor approval. As R&TC section 19777.5(e) is both the more specific provision and was later enacted, it takes precedence over R&TC section 19187(b)(1). Accordingly, OTA holds that R&TC section 19777.5(e) bars appellant from challenging the post-amnesty penalty on the basis that FTB failed to obtain written supervisory approval under R&TC section 19187(b)(1).⁷

Appellant argues that such a conclusion here would effectively repeal R&TC section 19187(b). It does not. OTA’s holding is limited: in refund appeals involving the post-amnesty penalty, taxpayers may raise only computation-related challenges. R&TC section 19187(b) remains potentially applicable to other penalties not at issue here.

Appellant also contends that OTA should harmonize the two statutes by interpreting R&TC section 19777.5(e) as limiting OTA’s ability to consider defenses such as reasonable

⁷ OTA notes that, in other matters not involving the post-amnesty penalty under R&TC section 19777.5, OTA may have jurisdiction to determine an appropriate remedy for an alleged violation of R&TC section 19187(b) where the taxpayer timely appeals FTB’s imposition of the penalty in a notice of action or FTB’s denial of the taxpayer’s claim for refund seeking penalty relief. (See Cal. Code Regs., tit. 18, § 30103(a)(1), (3); see also Cal. Code Regs., tit. 18, § 30104(e) [providing that OTA will have jurisdiction to determine if appellant is entitled to a remedy for an Agency’s violation of any substantive or procedural right to due process if the violation affects (1) the adequacy of the notice, (2) the validity of an action from which a timely appeal was made, or (3) the amount at issue in the appeal].)

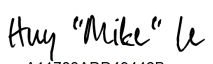
cause or good faith, while still permitting taxpayers to challenge the post-amnesty penalty on the ground that FTB failed to obtain written supervisory approval. This interpretation would require OTA to read into R&TC section 19777.5(e) an additional avenue for contesting the penalty beyond the Legislature's explicit and narrow directive permitting challenges solely on the ground of improper computation.⁸ Based on the preceding analyses, OTA declines to adopt such an interpretation.⁹

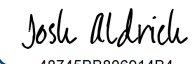
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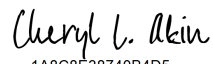
R&TC section 19777.5(e) bars a taxpayer from challenging the post-amnesty penalty on the ground that FTB failed to obtain written supervisory approval under R&TC section 19187(b).

DISPOSITION

Appellant's claim for refund is granted with respect to the interest abatement conceded by FTB for the period April 12, 2019, through November 14, 2019. In all other respects, FTB's denial of the claim for refund is sustained.

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Huy "Mike" Le
Administrative Law Judge

We concur:
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Josh Aldrich
Administrative Law Judge

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 7/1/2026

⁸ OTA cannot attempt to expand or enlarge its own power in the absence of either express or implied authority. (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1041.)

⁹ To the extent an argument or item is not specifically addressed herein, OTA evaluated it and considered it to be without merit, repetitive, and/or duplicative of arguments or items already addressed.