

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: R. WARDLEY AND T. WARDLEY <hr/> |))))) | OTA Case No. 19115437 |
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OPINION

Representing the Parties:

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| For Appellants: | Dehra DiFiore-Moles, Tax Assistance Appeals Program (TAAP) ¹ |
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| For Respondent: | Joel M. Smith, Tax Counsel III |
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| For Office of Tax Appeals: | Michelle Huh, Tax Counsel |
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T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Wardley and T. Wardley (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,990 for the 2018 taxable year.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether appellants are entitled to a refund of their 2018 overpayment.

FACTUAL FINDINGS

1. Appellants were residents of Tennessee during 2018.
2. To satisfy the balances due on their 2014 and 2015 personal income tax accounts, appellants requested an installment agreement with FTB for \$200 per month. FTB mailed appellants an Installment Agreement and Electronic Funds Transfer (EFT) Authorization form. The form lists both appellants and their Tennessee address and

¹ Appellants filed their opening brief. Dehra DiFiores-Moles of TAAP filed appellants’ reply brief.

states in Box 1 that appellants would be required to pay \$200 each month. Appellant-wife completed and signed the form, checking the box certifying that appellants had a financial hardship because the tax liability exceeded \$10,000, or the installment period for payment exceeded 36 months, or both. Appellant-wife indicated in Box 2 that appellants would make each EFT payment on the 15th day of each month and provided information about their bank checking account number on the form. The form also requires a separate signature for the EFT authorization, which appellant-wife signed. The first signature line of the form states, “My signature certifies that I read and agreed to the taxpayer installment agreement conditions on PAGE 2.” One of the listed conditions on page two is that FTB “will keep state tax refunds due to [appellants] and apply the funds towards [their] balance.”

3. On May 29, 2019, appellants filed a California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2018 taxable year, reporting a tax due of \$3,990.
4. On June 4, 2019, FTB received a payment of \$3,990 from appellants for their 2018 self-assessed tax liability.
5. On July 2, 2019, appellants filed an amended Form 540NR for the 2018 taxable year, reporting no tax due and claiming a refund of \$3,990.
6. FTB sent appellants a Notice of Tax Return Change – No Balance, dated August 22, 2019, stating that FTB had reduced appellants’ 2018 tax liability to zero, and that there was no longer any balance due for 2018.
7. FTB applied the 2018 overpayment of \$3,990 to the balance due on appellants’ 2014-2015 accounts.
8. Appellants requested a refund of \$3,990, the amount of the 2018 payment.
9. FTB treated appellants’ request as a claim for refund, which it subsequently denied.

DISCUSSION

Appellants’ Claim for Refund

If it is determined that taxpayers have an overpayment of any liability imposed under the Personal Income Tax Law, the “amount of the overpayment may be credited against any amount then due from the taxpayer[s] and the balance shall be refunded to the taxpayer[s].” (R&TC,

§ 19301(a); see also R&TC, § 19302.) Here, appellants filed their 2018 Form 540NR, reporting a tax due of \$3,990, which they paid late. After appellants filed their amended Form 540NR, reporting no tax liability, and FTB revised their 2018 account to reflect that fact, there was an overpayment of \$3,990 for appellants' 2018 taxable year.

Appellants do not dispute that they had outstanding balances due on their 2014 and 2015 accounts when FTB applied their 2018 overpayment to those balances. Nevertheless, appellants contend that they are entitled to a refund of their 2018 return payment for the following reasons: 1) they experienced financial hardship from the loss of the funds withdrawn for the 2018 payment; 2) they were in good standing with an existing installment agreement with FTB and that their certified public accountant (CPA) erroneously filed a 2018 return for them, and that they never authorized the filing of that return or the transmission of the 2018 payment;² and 3) they were unaware of the installment agreement condition that refunds will be applied to any deficiency.³

But appellants failed to show that FTB improperly applied their 2018 payment as a credit against their 2014 and 2015 outstanding balances due. Pursuant to the 2014/2015 installment agreement and R&TC section 19301(a), FTB properly applied appellants' 2018 overpayment amount of \$3,990 to amounts then due by appellants for the 2014 and 2015 taxable years. After FTB applied the credit to appellants' amounts due for the 2014 and 2015 taxable years, the 2018 overpayment was no longer an "available credit" for appellants to receive as a refund. (See, e.g., *Weber v. Commissioner* (2012) 138 T.C. 348, 361-362, citing *Freije v. Commissioner* (2005) 125 T.C. 14, 26.)

Jurisdiction of Office of Tax Appeals (OTA)

Since appellants' 2014 and 2015 accounts were not in overpayment status and they are not appealing the balance due for the 2014 and 2015 taxable years, OTA does not have jurisdiction to review whether the \$3,990 credit applied to the 2014 and 2015 taxable years

² However, R&TC section 19301 does not prescribe consideration of appellants' financial condition, good standing on their existing installment agreement, or a mistake by their CPA as reasons to grant a refund of an overpayment.

³ Appellants' contention that they were unaware of the installment agreement conditions is irrelevant to this appeal because appellants should have been aware of the installment agreement conditions stated on page 2 when appellant-wife signed the installment agreement request form, certifying that she "read and agreed to the taxpayer installment agreement conditions on PAGE 2."

should be refunded back to appellants. Thus, FTB properly denied appellants’ refund claim because it applied the overpayment from the 2018 taxable year to the amounts due for the 2014 and 2015 taxable years pursuant to the terms of the 2014/2015 installment agreement and R&TC section 19301(a).

HOLDING

Appellants are not entitled to a refund of their overpayment for the 2018 taxable year.

DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

DocuSigned by:
Tommy Leung
UC90542BE88D4E7...
Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
AT1783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
KBorg
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 1/6/2021