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LEGAL DIVISION MS A260
FRANCHISE TAX BOARD
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08.21.2026

Legal Ruling – 2026-02

SUBJECT: Application of Statutes of Limitation Provisions to Overcollected Amounts Received by the Franchise Tax Board Through Involuntary Collection Action.

ISSUES

1. What is the difference between overcollection and overpayment?

2. How does the statute of limitations on refund claims apply to overcollections and overpayments?

3. Is interest allowed on amounts returned as overcollections?

LAW AND ANALYSIS

Overpayment

An overpayment of tax occurs when a taxpayer pays more than their actual tax liability. If the taxpayer has overpaid their actual tax liability, the amount of the overpayment may be credited against any amount then due from the taxpayer and the balance shall be refunded.[1]

Overcollection

An overcollection occurs when FTB collects an excess amount at the time the collection action is taken as a result of a mechanical or clerical error by FTB. Collection of amounts pursuant to a valid assessment and proper collection procedure, even if the tax assessment is later demonstrated to be in error, will not result in an overcollection.

Application of the Statute of Limitations on Overpayments vs. Overcollections

R&TC section 19306 states that no credit or refund shall be allowed after four years from the original due date of the return, four years from the date the return was filed

[1] See Rev. & Tax. Code (R&TC) section 19301.

(if it was filed within the extension period), or one year from the date of the overpayment, whichever is later, unless before the expiration of that period a claim is filed by the taxpayer.

The statute of limitations bars a refund of an overpayment when a claim for refund is not filed within the time limit provided by law.[2] However, the statute of limitations provisions do not apply to the return of payments that were the result of an overcollection. An overcollection is not an overpayment of tax and can be returned even if the statute of limitations for filing a claim for refund has expired.

No Authority for the Payment of Interest on Overcollections

Interest is not allowed on the return of an overcollection of tax because the overcollection is not an overpayment of tax.

The provision allowing interest on overpayments does not apply to the return of overcollected amounts. This is because that provision, R&TC section 19340, applies to any . . . "overpayment in respect of any tax. . . ". An overcollection is not an overpayment of tax and therefore the provisions allowing interest on refunds do not apply to the return of sums that were overcollected.

Furthermore, R&TC section 19349 specifically prohibits the payment of interest on payments not made "incident to a bona fide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law."

Below are situations that demonstrate the difference between an overcollection and overpayment.

SITUATION ONE

FTB utilizes an Earnings Withholding Order for Tax (EWOT) to collect an outstanding liability through direct payments from the taxpayer's employer. At some point, the full tax liability is satisfied but the employer sends one or more additional payments before the EWOT is withdrawn.

HOLDING

The payments over the amount of the tax liability are the result of an overcollection and not barred by the statute of limitations from later being returned to the taxpayer. This was a type of clerical error in that there was no intent to collect the additional amounts; it was just an error in the timing of the notification to the employer's payroll personnel.

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[2] R&TC section 19306(a).

SITUATION TWO

FTB receives information that a taxpayer, a California corporation, may have net income of $50,020 beyond what was reported on its tax return. FTB issues a Notice of Proposed Assessment (NPA) showing the correct amounts and the assessment becomes a final liability. However, in calculating the final tax due, there is a clerical error and the tax collected is based on additional net income of $50,220.00 rather than the correct amount of $50,020.00.

HOLDING

The amount collected over the tax due on income of $50,020.00 is an overcollected amount. The clerical error resulted in the overcollection and the return of that amount is not barred by the applicable statute of limitations.

SITUATION THREE

FTB received income information indicating that a taxpayer received wages in an amount sufficient to file a tax return for the 2024 tax year. When the taxpayer failed to file a return, FTB issued an assessment for $3,164.00 in tax based on these unreported wages and following finalization of the liability, pursued collection action. FTB's collection action resulted in complete satisfaction of the assessment. However, after the statute of limitations had expired, the taxpayer filed a tax return claiming multiple deductions and credits, which was accepted by FTB and reduced the tax liability to $2,000. The taxpayer claims a refund of $1,164.

HOLDING

In this situation, FTB collected $3,164 related to a valid deficiency assessment. The taxpayer filed a return reflecting tax liability of $2,000 after the statute of limitations period expired. The $1,164 FTB collected over the tax liability reported by the taxpayer ($3,164 - $2,000 = $1,164) was not an overcollection. FTB properly based the assessment on correct information in its possession at the time of the assessment. It was the taxpayer's failure to file a timely return that resulted in the overpayment, not a clerical error by FTB.

SITUATION FOUR

FTB received information that Corporation XYZ, a retailer, filed a W-2 indicating it paid taxpayer Y $80,000.00 in wages during the 2024 tax year. When taxpayer Y failed to file a tax return for the 2024 tax year, a proposed assessment was issued to taxpayer Y based on the $80,000.00 of income. The assessment thereafter became final and FTB pursued collection activity, collecting all tax, penalties, and interest. After the applicable statute of limitations expired, taxpayer Y establishes that the W-2 was incorrect and taxpayer Y had actually only been paid $18,000.00. The tax due on the $18,000.00 is substantially less than that assessed on the $80,000.00 and the account is adjusted accordingly.

HOLDING

The resulting overpayment is not an overcollection. FTB made no clerical errors in this situation. FTB was authorized to estimate and assess the tax when the taxpayer failed to file a return. The assessment by FTB was valid as it was correct based on the information that FTB had at the time of the assessment. It was the taxpayer's failure to file a timely return or timely establish that a return was not required that resulted in the overpayment and FTB is barred by the statute of limitations from making a refund to the taxpayer.

SITUATION FIVE

FTB received information indicating that taxpayer X had a valid real estate broker's license for the 2024 tax year but had failed to file a tax return. FTB ascribed income to taxpayer X based on the real estate broker's license, using the calculated average business income of real estate brokers.[3] FTB issued a proposed assessment, which was collected after the proposed assessment went final. After the statute of limitations had expired, taxpayer X filed a tax return establishing that taxpayer X did not earn enough income to have a filing requirement in 2024 and claiming a refund. Taxpayer X’s return is accepted by FTB and the tax amount is adjusted to $0.

HOLDING

The resulting overpayment is barred from being refunded by the statute of limitations. This amount was not the result of an overcollection as FTB collected the appropriate amount based on a valid and final assessment. There was no clerical error by FTB as it used a method for estimating income that has been upheld by the courts. It was the taxpayer's failure to file a timely return or timely establish that a return was not required that resulted in the barred overpayment.

SITUATION SIX

FTB proposes a tax assessment against Corporation XYZ, which becomes a final liability at the conclusion of the appeal process. Corporation XYZ's last known address is 123 Main Street. FTB makes a clerical error and issues the Corporation’s collection notices to 122 Main Street. When the Corporation fails to make payment following the notices, FTB takes involuntary collection action and receives payments that satisfy the full tax liability. After the statute of limitations expired, Corporation XYZ establishes that the tax assessment was overstated because Corporation XYZ had no tax liability.

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[3] This was calculated by using the average of relevant business income amounts shown on the tax returns of real estate brokers.

HOLDING

Corporation XYZ did not receive due process as it relates to FTB's involuntary collection because the collection notices were not sent to Corporation XYZ's last known address. Thus, the collected amounts were not collected in accordance with the law and are an overcollection that may be refunded to Corporation XYZ.

DRAFTING INFORMATION

The principal authors of this legal ruling are Vivian Ho and Tristen Thalhuber of the Franchise Tax Board, Legal Division. For further information regarding this ruling, contact Ms. Ho and Mr. Thalhuber at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, California 95741-1720.