



3. On October 26, 2018, FTB issued a Notice of Proposed Assessment (NPA) for the 2013 tax year, increasing appellants' California taxable income by \$12,953 and proposing additional tax and interest.
4. On December 15, 2018, appellants filed an amended 2013 California tax return. They increased their income by \$12,953, but reduced that income by \$19,505 related to a net operating loss carryback from 2015 and claimed a child and dependent care expense credit of \$145. Overall, these adjustments resulted in the claimed refund of \$665.
5. FTB accepted the amended return as filed and canceled the NPA. However, FTB denied appellants' claim for refund on the basis that it was barred by the statute of limitations. This timely appeal followed.

### DISCUSSION

From the outset, we note that it is unclear whether appellants are disputing FTB's determination that they untimely requested a refund or credit. However, since appellants filed an appeal from that determination, we will address that issue first. R&TC section 19306 provides that no credit or refund shall be allowed or made after the later of: (1) four years from the date the return was filed, if filed by the extended due date; (2) four years from the due date of the return, without regard to extension; or (3) one year from the date of the overpayment.

Appellants timely filed their original 2013 tax return on October 9, 2014, which was within the extended due date. Four years from that date was October 9, 2018. Therefore, appellants are barred under the four-year statute of limitations from obtaining a credit or refund, because they filed their amended tax return and claimed a refund on December 15, 2018, about two months later.

Appellants' last payment date for the 2013 tax year was April 15, 2014. One year from that date was April 15, 2015. Therefore, appellants are barred under the one-year statute of limitations, because, again, they filed their amended tax return and claimed a refund on December 15, 2018.

In their appeal letter, appellants contend "the State of California should abide by the same rules, and should not have had the authority to assess additional taxes after the statute of limitations had expired in the first place." To the extent appellants argue FTB cannot assess taxes after the normal four-year statute of limitations under R&TC section 19057, we disagree.

The R&TC provides three exceptions that extend the normal statute of limitations for FTB's assessments. First, if there are adjustments to a taxpayer's federal account and either the taxpayer or the IRS notifies FTB within six months of the date the federal changes became final, FTB may issue a proposed assessment within two years of the date of notification, or within the general four-year period, whichever expires later. (R&TC, § 19059(a).) Second, if either the taxpayer or the IRS notifies FTB after this six-month period (from the date the federal changes became final), FTB may issue a proposed assessment within four years of the date of that notification. (R&TC, § 19060(b).) Finally, if neither the taxpayer nor the IRS notifies FTB of the federal changes, then FTB may issue a proposed assessment at any time. (R&TC, § 19060(a).) In any event, appellants' contention is beside the point. Their claim for refund was not timely filed, and the application of the statute of limitations to their claim is not affected by the statute of limitations governing FTB's assessment of taxes.<sup>3</sup>

Lastly, to the extent appellants believe it is unfair that FTB has this authority, their disagreement with the law should be directed to the Legislature, which is charged with formulating the law, rather than to those who are charged with enforcing the law as it is written. (See *Appeal of Walker* (73-SBE-020) 1973 WL 2752.)

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<sup>3</sup> Taxpayers may benefit from extended statutes of limitations for federal adjustments for purposes of filing a claim for credit or refund. For example, R&TC section 19311(a)(1) provides that a taxpayer has the later of the general statute of limitations period (here, R&TC section 19306) or two years from the date of the final federal determination to file a claim for credit or refund "resulting from the [federal] adjustment." Appellants have neither alleged nor shown that their claim was timely filed under R&TC section 19311(a)(1).

HOLDING

Appellants’ claim for refund is barred by the statute of limitations.

DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*Linda C. Cheng*  
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Linda C. Cheng  
Administrative Law Judge

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*Suzanne B. Brown*  
47F45ABE89E34D0...  
Suzanne B. Brown  
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