

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,        )  
  )  
C. COLE,                                   ) OTA NO. 240716948  
  )  
  )  
APPELLANT.                                )  
  )  
  )  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, August 13, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
C. COLE, ) OTA NO. 240716948  
APPELLANT. )  
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Transcript of Proceedings, taken at

12900 Park Plaza Drive, Suite 300, Cerritos,

California, 90703, commencing at 12:57 p.m.

and concluding at 1:10 p.m. on Wednesday,

August 13, 2025, reported by Ernalyn M. A.

Hearing Reporter, in and for the State of

## California

1 APPEARANCES:

2  
3 Panel Lead: ALJ ASAFA KLETTER

4  
5 Panel Members: HEARING OFFICER ERICA PARKER  
ALJ ANDREW WONG

6 For the Appellant: C. COLE

7 For the Respondent: STATE OF CALIFORNIA  
8 FRANCHISE TAX BOARD

9 JOHN LY  
10 JACKIE ZUMAETA

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## I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received into evidence at page 6. )

(Department's Exhibits A-C were received into evidence at page 6.)

## OPENING STATEMENT

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By Ms. Cole 12

1 Cerritos, California; Wednesday, August 13, 2025

2 | 12:57 p.m.

3

4 JUDGE KLETTER: So let's go ahead and go on the  
5 record.

6                   This is the Appeal of Cole. It's OTA Case  
7   No. 240716948. Today is Wednesday, August 13th, and the  
8   time is 12:57 p.m.

9 As I mentioned, my name is Judge Kletter. With  
10 me are Administrative Law Judge Andrew Wong and also  
11 Hearing Officer Erica Parker. While I am lead  
12 Administrative Law Judge in conducting this hearing, all  
13 three judges are co-equal decision makers.

24 If I can please have the parties each identify  
25 yourself by stating your name for the record, beginning

1 with Appellant.

2 MS. COLE: Carolyn Cole.

3 JUDGE KLETTER: Thank you.

4 And for Franchise Tax Board.

5 MR. LY: John Ly.

6 MS. ZUMAETA: And Jackie Zumaeta.

7 JUDGE KLETTER: Thank you so much.

8 And the hearing issue today is whether the  
9 statute of limitations bars Appellant's claim for refund  
10 for the 2019 tax year. With respect to the evidentiary  
11 record, FTB has provided Exhibits A through C. Appellant  
12 did not object to the admissibility of these exhibits.  
13 Therefore, these exhibits are entered into the record.

14 (Department's Exhibits A-C were received into  
15 evidence by the Administrative Law Judge.)

16 JUDGE KLETTER: Appellant provided Exhibit 1.  
17 FTB did not object to the admissibility of this exhibit  
18 and therefore, Exhibit 1 is also entered into the record.

19 (Appellant's Exhibit 1 was received into  
20 evidence by the Administrative Law Judge.)

21 JUDGE KLETTER: As a reminder, we have 10 minutes  
22 today for Appellant's presentation, ten minutes for  
23 Franchise Tax Board presentation.

24 And, Ms. Cole, you will also have 5 minutes for a  
25 closing statement or to respond to anything that Franchise

1 Tax Board has said. And we have also received what you  
2 would like to present at the -- if you would like to read  
3 that sheet of paper that you provided. Ms. Cole, are you  
4 ready to begin your presentation?

5 MS. COLE: Yes, I am.

6 JUDGE KLETTER: Please go ahead. You'll have 10  
7 minutes. Thank you.

8 MS. COLE: Okay.

10 PRESENTATION

11 MS. COLE: Good afternoon, everybody.

12 I wanted to read a document that I pulled up.  
13 It's from the Tax Crisis Institute, and it states the  
14 facts about the FTB collections statute for taxpayers who  
15 owe back taxes in California. One of the most important  
16 concepts to understand is the collection statute of  
17 limitations. This statute establishes a set period during  
18 which the California Franchise Tax Board can pursue  
19 collection actions on unpaid tax limit. A liabilities  
20 often referred to as the collection statute expiration  
21 date. This 20-year period is set forth under California  
22 Revenue & Taxation Code section 19255 which authorizes FTB  
23 to utilize various collection methods throughout this  
24 time, including levies, liens, and garnishments.

25 I want to just make a few points concerning the

1       return of the taxes that are owed me. First, FTB can  
2       harass a taxpayer for 20 years using drastic measures to  
3       collect money owed. Second, taxpayers have 5 years to  
4       collect what FTB owes them. It took FTB  
5       four-and-a-half -- over four-and-a-half years to find the  
6       mistake in my 2019 return in 2024. The same year that the  
7       statute of limitations expired to file an amendment. The  
8       Letter of Discovery came at the peak of tax season. My  
9       tax preparer was swamped, and I had no idea how to correct  
10      it. We had approximately 46 days to determine what was  
11      missed on the 2019 tax return.

12           My tax preparer had to contact FTB, which was a  
13      task in itself, to find out what forms he needed to  
14      correct and submit. Inadvertently, we missed the statute  
15      of limitations deadline by 39 days. I owed FTB \$1,884 in  
16      that same year, 2019, and I paid them what I owed them.  
17      I'm asking for the same courtesy. I believe that is wrong  
18      for FTB to have 20 years to collect by any means from a  
19      taxpayer of money owed to them and gives the taxpayer only  
20      5 years to collect taxes owed to them by FTB no matter  
21      when the underpayment is discovered; in my case, 46 days  
22      before the statute of limitations expired.

23           I request that this injustice be reversed, and  
24      that FTB is required to pay me what they owe me, and to  
25      pay me interest because I would have had to pay interest

1 if I owed them.

2 That's my case.

3 JUDGE KLETTER: Thank you very much, Ms. Cole.

4 Some of the information that you discussed was facts of  
5 personal knowledge. As we mentioned during the prehearing  
6 conference, if I swear you in in accordance with OTA's  
7 regulations, then -- oh, sorry -- Office of Tax Appeals  
8 regulations, then this panel can consider your statements  
9 as evidence. So I'd like if you could just please raise  
10 your right hand.

11

12 C. COLE,

13 produced as a witness, and having been first duly sworn by  
14 the Administrative Law Judge, was examined, and testified  
15 as follows:

16

17 JUDGE KLETTER: Okay. Thank you so much. I just  
18 wanted to make sure we had that in the record.

19 MS. COLE: Thank you.

20 JUDGE KLETTER: And now I'll go over to Franchise  
21 Tax Board.

22 Mr. Ly, are you ready to begin your presentation?

23 MR. LY: Yes. Thank you.

24 JUDGE KLETTER: Please go ahead.

25 ///

## PRESENTATION

MR. LY: Good afternoon. I, John Lee, along with Jackie Zumaeta, represent Respondent Franchise Tax Board.

16 For the 2019 tax year, as Appellant filed her  
17 original return in February 2020, the four-year statute of  
18 limitations expired on April 15th, 2024, before she filed  
19 her amended return on May 24th, 2024. Under the one-year  
20 statute of limitations, Appellant did not have any  
21 payments on her 2019 tax year account that were made  
22 within one year of the filing of her amended return.  
23 According to law, Appellant's return payment and her  
24 withholding credit are deemed paid on the applicable  
25 return due date of April 15, 2020. Therefore, the

1       one-year statute of limitations is also unavailable to  
2       allow a refund of Appellant's overpayment for the 2019 tax  
3       year.

4               Appellant contends that she was unable to timely  
5       file her claim for refund because Respondent did not  
6       provide enough advance notice of her unclaimed non-wage  
7       withholding credits. However, the law is clear that the  
8       Notice of Non-Wage Withholding Credits is sent as a  
9       courtesy to taxpayer, as Respondent has no duty to  
10      discover a taxpayer's overpayment or to notify the  
11      taxpayer of such overpayment. The language of the statute  
12      of limitations is explicit and must be strictly construed.

13               In the precedential opinion of the Appeal of  
14      Gillespie, OTA held that there's no equitable basis for  
15      suspending the statute of limitations. Moreover, the  
16      United States Supreme Court in *United States v. Dalm*  
17      explain that a taxpayer's failure to file a claim for  
18      refund or credit within the statute of limitations bars  
19      the refund or credit even when it is later shown that the  
20      tax was not owed in the first instance.

21               Appellant has not provide any additional evidence  
22      that would allow Respondent by law to grant her claim for  
23      refund. Therefore, Respondent respectfully request that  
24      the Office of Tax Appeals sustain Respondent's claim for  
25      refund denial for the 2019 tax year.

1                   Thank you, and I'm happy to answer any questions.

2                   JUDGE KLETTER: Thank you so much.

3                   Ms. Cole, I will give you a chance to respond.

4                   I'm just going to ask my panel if there are any questions,  
5                   and it looks like there are none. So I do not have any  
6                   questions, and I will just check with my panel at the end,  
7                   but, Ms. Cole, you will have 5 minutes if there's anything  
8                   you want to say in response to Franchise Tax Board or any  
9                   final statement or anything else before this case is  
10                  submitted. Please go ahead.

11

12                   CLOSING STATEMENT

13                   MS. COLE: I do have something to say. I'm  
14                   Carolyn Cole, and I understand the information that was  
15                  just shared. However, John -- what's your name? I'm  
16                  sorry.

17                   MS. ZUMAETA: Jackie.

18                   MR. LY: John.

19                   MS. COLE: John stated that he did -- the Office  
20                  of Franchise Tax Board didn't have -- wasn't obligated to  
21                  send me a letter stating that I had an underpayment. So  
22                  my question is, why did you? I mean, if you have these  
23                  stipulations that if we don't meet the statute of  
24                  limitations to correct the situation, why send the letter  
25                  if it's just a courtesy to let us know that you owe us or

1 we made a mistake? That's my question.

2 JUDGE KLETTER: I'm not sure if Franchise Tax  
3 Board wants to respond, but I know they mentioned that it  
4 was sent as courtesy. So that --

5 MS. ZUMAETA: Judge Kletter, would you like us to  
6 respond?

7 JUDGE KLETTER: If you have something.

8 MS. ZUMAETA: Okay. Sure. Sure. So we -- we do  
9 send a courtesy notice for non-wage withholdings generally  
10 about 60 days before the statute of limitations is going  
11 to expire. That has been a practice that was instituted  
12 as a taxpayer friendly measure, but it is not something  
13 that is required of the Franchise Tax Board. It's  
14 something that's done as a courtesy as John mentioned.

15 So we -- you know, it's unfortunate, of course,  
16 that Ms. Cole did not have the time to be able to get  
17 her -- her amended return in during that 60-day window.  
18 But that -- that is the practice of the Franchise Tax  
19 Board in terms of sending out those courtesy notices.

20 JUDGE KLETTER: I'm just going to ask my panel if  
21 they have any questions.

22 Judge Wong, do you have any questions?

23 JUDGE WONG: No questions.

24 JUDGE KLETTER: And, Hearing Officer Parker, do  
25 you have any questions?

1                   HEARING OFFICER PARKER: No questions.

2                   JUDGE KLETTER: Okay. I also do not have any  
3                   questions as well.

4                   I'd like to thank you, Ms. Cole for appearing  
5                   today and also providing your testimony.

6                   This concludes this hearing.

7                   And this panel will meet and decide the case  
8                   based on the documents and the testimony that was  
9                   presented. We will issue our written decision no later  
10                  than 100 days from today. The case is submitted, and the  
11                  record is now closed.

12                  (Proceedings concluded at 1:10 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was  
6 taken before me at the time and place set forth, that the  
7 testimony and proceedings were reported stenographically  
8 by me and later transcribed by computer-aided  
9 transcription under my direction and supervision, that the  
10 foregoing is a true record of the testimony and  
11 proceedings taken at that time.

12 I further certify that I am in no way interested  
13 in the outcome of said action.

14 I have hereunto subscribed my name this 8th day  
15 of August, 2025.

ERNALYN M. ALONZO  
HEARING REPORTER