

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of:)	OTA Case No. 240716801, 240817072, &
H. OKEKE)	240817266
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: H. Okeke

For Respondent: Caitlin S. Russo, Senior Legal Analyst

T. STANLEY, Administrative Law Judge: On July 2, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$21,663.18 for the 2017 taxable year, \$17,941.59 for the 2018 taxable year, and \$19,760.41 for the 2019 taxable year. In the Opinion, OTA held that appellant's claims for refund were barred by the statute of limitations.

On August 1, 2025, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334 on the basis that the Opinion is contrary to law and is inequitable. Upon consideration of appellant's petition, OTA concludes that the grounds set forth in the petition do not constitute a basis for granting a new hearing.

OTA will grant a rehearing where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

The “contrary to law” standard of review involves a review of the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) The question of whether the Opinion is contrary to law is not one which involves a weighing of the evidence, but instead, requires a finding that the Opinion is “unsupported by any substantial evidence”; that is, the record would justify a directed verdict against the prevailing party. (*Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) The question before OTA on a petition for rehearing does not involve examining the quality or nature of the reasoning behind OTA’s Opinion, but whether that Opinion can be valid according to the law. (*Ibid.*)

A rehearing may be granted when, after examining the evidence in the light most favorable to the prevailing party (here, FTB), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellant) establishes that the Opinion is contrary to law. (*Appeal of Shanahan, supra.*) The fact that appellant is dissatisfied with the outcome of his appeal is not grounds for a rehearing. (*Appeal of Le Beau*, 2018-OTA-061P.)

Here, appellant asserts that OTA misapplied R&TC section 19306(a)¹ because he filed his 2017, 2018, and 2019 tax returns within a year from the date of overpayment of withholdings and estimated tax payments. However, OTA did address R&TC section 19306(a) for each taxable year at issue. Namely, the Opinion discussed withholdings that were credited on the original due date for the respective returns: (1) April 15, 2018, for taxable year 2017; (2) April 15, 2019, for taxable year 2018; and (3) April 15, 2020, for taxable year 2019. (R&TC, § 19002(c)(1).) Appellant did not claim a refund of withholdings until July 15, 2024, for taxable years 2017 and 2018, and May 5, 2024, for taxable year 2019, all of which are four or more years after the withholdings were deemed paid.

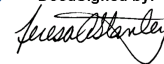
Appellant also contends he filed his claim for refund within one year of making payments to FTB. The Opinion addressed each of appellant’s payments and concluded that appellant’s claim for refund was filed more than one year after appellant made the payments. Specifically, OTA found that: (1) payments for taxable year 2017 were made between January 20, 2021, and May 26, 2021, so appellant’s claim for refund filed on July 15, 2024, was more than three years later; (2) payments for taxable year 2018 were made between May 15, 2021, and July 25, 2022, so appellant’s claim for refund filed on July 15, 2024, was almost two years later; and (3) payments for taxable year 2019 were made between July 25, 2022, and January 1, 2023, so appellant’s claim for refund filed on May 5, 2024, was more than a year after appellant’s final payment. Consequently, OTA found that appellant’s claims for refund were each barred due to

¹ Appellant mistakenly refers to R&TC section 19306(b).

the expiration of the statute of limitations. OTA correctly applied R&TC section 19306(a), and therefore, appellant has not established that the Opinion is contrary to law.

Appellant's second basis for requesting a rehearing is that there were equitable considerations that would allow tolling of the statute of limitations. However, equitable considerations are not included as one of the grounds for rehearing specified in California Code of Regulations, title 18, section 30604(a). Furthermore, the Opinion addressed appellant's hardships and concluded that appellant made reasonable cause arguments that do not allow for tolling of the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P [there is no reasonable cause or equitable basis for suspending the statute of limitations].)

Accordingly, appellant has not established grounds for a rehearing, and the petition is denied.

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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:

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Josh Lambert
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 11/3/2025