

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
K. BERNHOFT and Y. BERNHOFT, ) OTA NO. 240917346  
 )  
 APPELLANTS. )  
 )  
 )

## TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, December 10, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings,  
taken at 12900 Park Plaza Drive, Suite 300,  
Cerritos, California, 90703, commencing at  
9:52 a.m. and concluding at 10:10 a.m. on  
Wednesday, December 10, 2025, reported by  
Ernaly M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ STEVEN KIM

Panel Members: ALJ JOSH ALDRICH  
ALJ ASAF KLETTER

For the Appellant: K. BERNHOFT

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
JEFFREY GATES  
NATHAN HALL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-4 were 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 Mr. Gates	11

CLOSING STATEMENT

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By Mr. Bernhoft	13

1 Cerritos, California; Wednesday, December 10, 2025

2 9:52 a.m.

3

4 JUDGE KIM: We are going on the record.

5 This is the Appeal of K. Bernhoft and  
6 Y. Bernhoft, OTA Case No. 240917346. The date is  
7 Wednesday, December 10th, 2025, and the time is 9:52 a.m.  
8 This hearing is being held in person in Cerritos,  
9 California.

10 I am Judge Steven Kim. I will be the lead ALJ  
11 for this appeal. My co-panelists are Judge Josh Aldrich  
12 and Judge Asaf Kletter. We are equal participants in  
13 deliberating and determining the outcome of this appeal.

14 The parties, when you speak, could you make sure  
15 you speak into the mic and turn it on. The green light  
16 should be on.

17 So if we can start with Appellants, can you  
18 please state your name.

19 MR. BERNHOFT: Kurt Bernhoft.

20 JUDGE KIM: Thank you.

21 And for Respondent FTB.

22 MR. GATES: I'm Jeffrey Gates.

23 MR. HALL: And Nathan Hall.

24 JUDGE KIM: Thank you.

25 As stated in my prehearing conference Minutes and

1 Orders, the issue to be decided in this appeal is whether  
2 Appellant's claim for refund for the 2019 tax year is  
3 barred by the statute of limitations.

4 Mr. Bernhoft, do you agree?

5 MR. BERNHOFT: Yes.

6 JUDGE KIM: And, Mr. Gates?

7 MR. GATES: Yes.

8 JUDGE KIM: Thank you.

9 Appellants submitted Exhibit 1 through 4 with  
10 their opening brief, and Respondent did not object to the  
11 admissibility of these exhibits. Therefore, Exhibits 1  
12 through 4 are now admitted into evidence.

13 (Appellant's Exhibits 1-4 were received into  
14 evidence by the Administrative Law Judge.)

15 JUDGE KIM: After the prehearing conference,  
16 Appellants submitted a screenshot of Revenue & Taxation  
17 Code section 19306. You don't have to admit that into  
18 evidence.

19 MR. BERNHOFT: No.

20 JUDGE KIM: You're free to refer to it during  
21 your presentation.

22 MR. BERNHOFT: Thank you.

23 JUDGE KIM: Respondent submitted Exhibits A  
24 through C, and Appellants did not object to the  
25 admissibility of these exhibits. Therefore, Exhibits A

1 through C are now admitted into evidence.

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

4 JUDGE KIM: Appellant Mr. Bernhoft has indicated  
5 he will testify as a witness, and the Respondent did not  
6 raise any objections.

7 Mr. Bernhoft, do you still intend to testify  
8 today?

9 MR. BERNHOFT: Yes.

10 JUDGE KIM: Okay. Since you will be testifying  
11 as a witness, Respondent may ask you questions about your  
12 testimony.

13 Okay. Mr. Bernhoft, before we begin your  
14 presentation, I need to place you under oath so that we  
15 can consider your statements as testimony. And you will  
16 remain under oath until the end of the hearing. So please  
17 raise your right hand.

18

19 K. BERNHOFT,  
20 produced as a witness, and having been first duly sworn by  
21 the Administrative Law Judge, was examined, and testified  
22 as follows:

23

24 JUDGE KIM: Thank you, Mr. Bernhoft.

25 You will have 10 minutes for your presentation,

1 and please begin when you're ready.

2 MR. BERNHOFT: Okay.

3

4 PRESENTATION

5 MR. BERNHOFT: First of all, I just want to say  
6 I'm not a lawyer. So hopefully I'll try and present  
7 concise information the best I can.

8 I've been a resident of California my entire  
9 life, 67 years, tax paying citizen for over 50. I always  
10 paid my taxes on time. I do the right thing. Law  
11 abiding, of course. So I -- for me, it's -- I would like  
12 to hopefully get some consideration from the -- from the  
13 Judges of -- I paid the taxes. It was an overpayment, and  
14 maybe there's consideration that, actually, it would come  
15 back to me.

16 The overpayment was made in April of 2020. At  
17 that time, I wasn't notified. I wasn't aware of it there  
18 was an overpayment. But I was notified in February of  
19 2024 there was an overpayment made, and I was notified by  
20 the Franchise Tax Board. I understand that the Franchise  
21 Tax Board isn't obligated to notify me, but it was  
22 46 months past before the notification was made. It was  
23 made, and it turns out it's like two months before the --  
24 the apparent statute of limitations expires.

25 So with that said, I thought I was -- I spoke to



1       somebody with -- consulting over the phone with the  
2       Franchise Tax Board. They did tell me that, based on what  
3       the information they're looking, it would be extended to  
4       the July date. There was an extension because -- because  
5       of COVID at that time. And I did talk to my tax  
6       accountant, and they -- they interpreted it the same way.  
7       So I thought I was okay to actually have them put together  
8       a good revision of my tax return without me doing it  
9       myself. I wanted to make sure everything was right.

10               So I had my tax accountant do it. It was  
11       submitted on the 10th of June, which I thought was in a  
12       timely manner. You know, based on the timeline that I  
13       interpreted, it wasn't a concern to get it done prior  
14       to -- I guess it would be April 15th, but I thought it was  
15       in July so.

16               So that's all I have. Thank you.

17               JUDGE KIM: Thank you, Mr. Bernhoft.

18               Respondent, do you have any questions for  
19       Mr. Bernhoft?

20               MR. GATES: No. No questions.

21               JUDGE KIM: Judge Aldrich, do you have any  
22       questions?

23               JUDGE ALDRICH: Hi. Yeah. I just had a couple  
24       of questions.

25               You indicated that you spoke with FTB or a

1 representative of FTB. When did that occur?

2 MR. BERNHOFT: Yeah. That's -- unfortunately,  
3 it's not recorded. It was after I received the letter on  
4 2/24. It was 2/12 of 2024. It was probably in March, but  
5 I didn't document it. I know it's probably not documented  
6 anywhere with the -- with the phone person that received  
7 my phone call, but I did. They were super friendly over  
8 the phone, super helpful. Had some nice conversations.  
9 But after that conversation was over, he had pretty much  
10 explained that it was -- would be -- he -- he actually  
11 came back, like, five minutes after our conversation. He  
12 said he spoke with somebody and looks like it would be  
13 extended to the -- to July 15th, which was the extension  
14 of that 2020 deadline. So that conversation did take  
15 place but again, there's no evidence of it. I just my --  
16 that's my -- I did -- I did have the discussion. So --

17 JUDGE ALDRICH: Okay. Thank you.

18 JUDGE KIM: Just to clarify, you're saying he  
19 said the statute of limitations period would be extended?

20 MR. BERNHOFT: Yes. That is correct.

21 JUDGE KIM: Okay. Judge Kletter, do you have any  
22 questions for Mr. Bernhoft?

23 JUDGE KLETTER: No questions. Thank you.

24 JUDGE KIM: Thank you.

25 I don't have any questions at this time.

1 All right. Mr. Gates, you'll have 10 minutes for  
2 Respondent's presentation, and you may proceed when you're  
3 ready.

4 MR. GATES: Thank you.

5  
6 PRESENTATION

7 MR. GATES: Good morning. As I said earlier, my  
8 name is Jeffrey Gates, and today with me is Nathan Hall.  
9 We're here representing Respondent.

10 JUDGE ALDRICH: Mr. Gates, could you move the  
11 microphone a little bit closer to you? I'm sorry for the  
12 interruption.

13 MR. GATES: I'm sorry. Is that better?

14 Now, today's appeal is -- was mentioned earlier  
15 with the issue is direct question on whether the Revenue &  
16 Tax Code 19306, which sets the four-year statute of  
17 limitations, was extended by the COVID extension of filing  
18 returns for the 2019 tax year. While at issue that we  
19 have today is that it doesn't extend the deadline.  
20 Whether or not Franchise Tax Board's phone call that  
21 Mr. Bernhoft had mentioned had occurred, it's simply --  
22 that's not how the statute operates. In fact, it says in  
23 there that the statute of limitations is not going to be  
24 extended based on any extension of the filing date for the  
25 returns for the particular year.

1           Secondly, there's also a precedential opinion  
2     from the Office of Tax Appeals from this year stating that  
3     COVID-19 extension does not affect statute of limitations  
4     for claims for refund. And the end result is it is quite  
5     unfortunate, and it's -- what's unfortunate is also that  
6     Franchise Tax Board cannot, under the statute, process the  
7     claims for refunds that are outside of the statute of  
8     limitations. We cannot waive jurisdiction, and it is the  
9     only way that the Franchise Tax Board would be able to  
10    process this claim for refund.

11           So with that, I'll finish my presentation. And  
12    if there are any questions, please feel free to -- to ask  
13    them.

14           JUDGE KIM: Thank you.

15           Judge Aldrich, did you have any questions for  
16    Respondent?

17           JUDGE ALDRICH: Hello. The precedential opinion  
18    that you're referring to, would that Appeal of Nguyen?

19           MR. GATES: Correct. That's Appeal of Nguyen,  
20    and the citation is 2025-OTA-333P.

21           JUDGE ALDRICH: Thank you.

22           JUDGE KIM: Judge Kletter, did you have any  
23    questions for Respondent?

24           JUDGE KLETTER: This is Judge Kletter. No  
25    questions.

1 JUDGE KIM: Thank you.

2 Mr. Bernhoft, you indicated you would like to  
3 make a closing statement. You have five minutes and may  
4 proceed when you are ready.

5 MR. BERNHOFT: Okay.

6

7 CLOSING STATEMENT

8 MR. BERNHOFT: There was -- it was March 5th of  
9 2025 that I actually spoke to the pro bono lawyer, which  
10 was really nice to have that opportunity. And he did --  
11 he's the one that expressed that 19306(a) would be a  
12 viable argument to extend the statute of limitations based  
13 on his interpretation. It -- it states or mails a Notice  
14 of Proposed of Overpayments, and there was no notice  
15 mailed. So, I mean, it's just kind of reading it as it  
16 is. That was his interpretation of it.

17 As a taxpayer I'm obligated to follow prescribed  
18 deadlines, which all makes sense. And the FTB states my  
19 lack of knowledge of laws regarding statute of limitations  
20 is no excuse. But it kind of -- I get a, kind of,  
21 condescending letter I have here that that lack of my --  
22 the lack of attention on my part, lack of attention of the  
23 timeliness, my confusion, my failure, my error, et cetera;  
24 so, basically, I'm just being told that I'm -- you know,  
25 I'm wrong. So flat out, which, you know, I think maybe

1       there should be some more little consideration than that.

2               The other thing is that it took over --  
3       obviously, I mentioned it took, like, four years for them  
4       to send the notice out, which is great. I'm glad they  
5       sent the notice. It would have been good to get it a  
6       little bit earlier so I have more time to respond, even  
7       though they're not obligated to send the notice out. But  
8       then after -- after it's all said and done, when I --  
9       that -- from the deadline in 2024, April 15th, I guess it  
10      would be, until now, it's like -- it's basically  
11      20 months. So it's been 20 months that we've been working  
12      through this.

13              So while I'm required to follow exact prescribed  
14      deadlines, the Federal Tax Board has the opportunity just  
15      to, you know, expand this out over a very long time period  
16      without resolution. So I don't think it's right or fair  
17      that the FTB holds taxpayer to the exact standard but have  
18      no obligation to resolve disputes in a timely manner.

19              So I just hope that the Judges will consider that  
20      I'm a -- I've always paid my taxes on time. In this case,  
21      it was overpaid, but it was, obviously, an error. You  
22      know, I'd like to see that considered that it be due back  
23      to the taxpayer.

24              Thank you.

25              JUDGE KIM: Thank you, Mr. Bernhoft.

1 I think my panel had a question they wanted to  
2 ask.

3 JUDGE ALDRICH: Hi. This is a question -- or  
4 these questions are directed to FTB or Respondent.

5 I guess I was wondering if you could walk me  
6 through this a little bit analytically. So Revenue &  
7 Taxation Code section 19306(a) has three separate parts to  
8 it, right. In this case when was the return filed?

9 MR. GATES: The amended return was filed on  
10 June 10th of 2024.

11 JUDGE ALDRICH: And the initial return?

12 MR. GATES: The initial return was filed on  
13 April 7th, 2020.

14 JUDGE ALDRICH: Okay. And so if we were looking  
15 at the four years from the date the return was filed,  
16 would be looking at the initial return or the amended  
17 return?

18 MR. GATES: We'd be looking at the initial  
19 return.

20 JUDGE ALDRICH: Okay. And with respect to  
21 19306(a)(2), how does that apply or not apply?

22 MR. GATES: So for (a)(2), is that the section  
23 that relates to --

24 JUDGE ALDRICH: The prescribed for filing a  
25 return for year at issue.

1           MR. GATES: Oh, for the year at issue. Well, it  
2 applies in that the statute -- the date that the statute  
3 of limitations will begin to run. It's going to be the  
4 later of either the date the return was filed or the  
5 original due date of the return. So the statute of  
6 limitations begins on April 15th of 2020, rather than  
7 April 7th of 2020. So that's -- it relates more to the  
8 beginning of the statute of limitations, rather than the  
9 length of it.

10           JUDGE ALDRICH: And so with respect to the third,  
11 I guess, prong, one year from the date of overpayment, was  
12 this in context of -- over withholdings or --

13           MR. GATES: Yes. This was withholdings. It  
14 wasn't a payment that was made by -- by the Appellant.

15           JUDGE ALDRICH: And when would we deem  
16 withholding to be paid.

17           MR. GATES: It's deemed to be paid on the  
18 original due date of the return.

19           JUDGE ALDRICH: Okay. And so that would be in  
20 this -- for this tax year, it would be April 15th,  
21 according to FTB?

22           MR. GATES: Correct. April 15th of 2020.

23           JUDGE ALDRICH: Okay. I think that concludes my  
24 questions on the matter.

25           JUDGE KIM: Thank you, Judge Aldrich.



1 Judge Kletter, did you have any final questions?

2 JUDGE KLETTER: I just wanted to round out the  
3 analysis. So under the four-year statute of limitations,  
4 there's also four years from the time that the return was  
5 filed, if the return was filed pursuant to an extension of  
6 time to file. So I just wanted to ask how you would apply  
7 that limitation.

8 MR. GATES: I'm sorry. Could you repeat it? You  
9 said that when there's an extension of time to file?  
10 Well, no, it's that when there is an extension of time to  
11 file, the claim for refund is not extended as a result of  
12 that extension to file.

13 JUDGE KLETTER: Okay. Thank you. Just no more  
14 questions.

15 JUDGE KIM: Thank you, Judge Kletter.

16 Okay. Thank you for presentations. I don't have  
17 any additional questions either. So -- sorry. One  
18 minute.

19 Mr. Bernhoft, did you have anything that you want  
20 to add in response to --

21 MR. BERNHOFT: No, I'm good. And I appreciate  
22 everybody's time, so thank you.

23 JUDGE KIM: Great. Thank you so much.

24 All right. This case is submitted on  
25 December 10th, 2025. The record is now closed.

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Thank you, everyone, for participating in the hearing today. The Judges and I will meet to deliberate this appeal, and we will issue a written opinion within 100 days of today.

Today's hearing in the Appeal of K. Bernhoft and Y. Bernhoft is now concluded.

(Proceedings concluded at 10:10 a.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:

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

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

I have hereunto subscribed my name this 5th day  
of January, 2026.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER