

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
L. OSTARELLO) OTA Case No. 241218324
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OPINION

Representing the Parties:

For Appellant: L. Ostarello
Eleonora Burchill, CPA

For Respondent: Michael Laisne, Attorney
Eric Lemon, Graduate Student Assistant

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Ostarello (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,248 for the 2019 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) Office of Tax Appeals (OTA) Hearing Officer Kim Wilson held a virtual oral hearing for this matter on August 20, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellant’s claim for refund for the 2019 tax year is barred by the statute of limitations.

FACTUAL FINDINGS

1. On May 21, 2020, FTB received appellant's 2019 Income Tax Return reporting total tax of \$11,295, total payments of \$11,918, and an overpayment of \$623.¹ Appellant instructed FTB to apply the overpayment to tax year 2020.
2. On February 12, 2024, FTB sent appellant a notice, Unclaimed Nonwage Withholding Credits, informing appellant that appellant may be entitled to an estimated nonwage withholding credit of \$2,247.75, which appellant did not claim on the 2019 tax year return filed. FTB advised that to claim the credit, appellant should file an amended return by one of the following timelines: four years from the original due date; four years from the date the return was filed, if filed by the extended due date, or one year from the date of the withholding payment which is considered to be made on the tax return's original due date.
3. On June 17, 2024, appellant's representative contacted FTB to inquire whether appellant had time to amend her return. FTB erroneously advised appellant's representative that because the original filing deadline had been postponed to July 15, 2020, that appellant had until July 15, 2024, to file the amended return and claim the refund.
4. On July 15, 2024, appellant filed an amended return reporting total tax of \$11,295, total payments of \$14,166, and an overpayment of \$2,871.²
5. FTB treated appellant's amended return as a claim for refund. On December 2, 2024, FTB denied appellant's claim for refund due to the expiration of the statute of limitations.
6. This timely appeal follows.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (R&TC, § 19306(a).) The taxpayer

¹ Appellant's payments totaling \$11,918 were comprised of \$10,418 in withholdings, \$1,436 in estimated tax payments transferred from the 2018 tax year, and \$64 in excess state disability insurance.

² The overpayment on the amended tax return included the \$623 overpayment from the original return, which appellant had instructed FTB to apply to 2020, and \$2,248 of nonwage withholding credits (\$623 + \$2,248 = \$2,871).

has the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Ibid.*) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Ibid.*) The U.S. Supreme Court has found this to be true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Appellant asserts that the claim for refund was filed within the four-year statute of limitations based on the COVID-19 state of emergency postponement FTB provided to taxpayers in 2020 that postponed the filing and payment deadlines until July 15, 2020.³ In other words, since the original due date for the 2019 return was postponed until July 15, 2020, appellant asserts that the four-year statute of limitations should have expired on July 15, 2024.

California grants taxpayers an automatic six-month extension from the due date of the return to file their tax returns. (Cal. Code Regs., tit. 18, § 18567(a).) Under Treasury Regulation section 301.7508A-1(c)(3), a disaster postponement under Internal Revenue Code section 7508A runs *concurrently* with other extensions of time to file and pay.⁴ If a taxpayer files their return by October 15 in the year in which it is due, then the four-year refund claim deadline starts on the date the return was filed. (R&TC, §§ 19306, 18567.)

On May 21, 2020, appellant filed a tax return for the 2019 tax year within the automatic extension period. Because appellant timely filed during the extension period, the first four-year statute of limitations period applies and expired on May 21, 2024, four years from the date appellant filed her 2019 return. The original due date for appellant's tax return was April 15, 2020. Accordingly, the second four-year statute of limitations period for the 2019 tax year expired on April 15, 2024. FTB's postponement of the due date to July 15, 2020, did not change the original April 15, 2020 due date of appellant's 2019 return, upon which the second four-year statute of limitations is based. (*Appeal of Nguyen*, 2025-OTA-333P; see also Treas.

³ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-5-april-15-tax-day-postponed-until-july-15-2020.html>.

⁴ FTB's authority to grant state of emergency postponements for tax-related acts is pursuant to R&TC section 18572(b), which adopts Internal Revenue Code section 7508A. (See *Appeal of Bannon*, 2023-OTA-096P.)

Reg. section 301.7508A-1(b)(4).) Because May 21, 2024, is the latter of these two dates, the four-year statute of limitations expired on May 21, 2024.

As discussed above, the disaster postponed deadline for the COVID-19 pandemic does not affect the statute of limitations periods in this case. Here, appellant filed the 2019 tax return on May 21, 2020. Therefore, under R&TC section 19306(a) the statute of limitations period for appellant to timely claim a refund was four years from the date the return was filed. Appellant was required to file a claim for refund by May 21, 2024, for the claim to have been timely. Since appellant's amended tax return was not filed until July 15, 2024, it was not timely under the four-year statute of limitations.

The one-year statute of limitations is analyzed based on the date of appellant's payments. Pursuant to R&TC section 19002(c)(1), payments made by way of withholding are deemed paid on the due date of the return. Pursuant to the one-year statute of limitations, the time to claim appellant's refund expired on April 15, 2020, one year after the withholding credits were deemed paid to FTB.

While the statute of limitations must be strictly construed, in certain circumstances, FTB may be estopped from relying on the statute of limitations to deny a refund claim "where the agency's erroneous advice has induced the claimant to delay filing until after the limitations period has expired." (*Appeal of Wheat* (83- SBE-150) 1983 WL 15535.) Equitable estoppel may be raised as a defense against the government only in rare and unusual circumstances and when its application is necessary to prevent manifest injustice. (See *Appeal of Sedillo*, 2018-OTA-101P.) To establish equitable estoppel, appellant must show the following: (1) FTB was aware of the actual facts; (2) FTB must be shown to have made an incorrect or inaccurate representation to appellant and intended that appellant would rely on its conduct; (3) appellant was ignorant of the true state of facts; and (4) appellant relied upon FTB's conduct to her detriment. (*Ibid.*) The party asserting an estoppel bears the burden of proof and, thus, appellant must establish each of these four elements. (*Ibid.*)

It is undisputed that FTB erroneously advised appellant that she had until July 15, 2024, to file a 2019 amended return. Here, OTA finds that FTB was aware of the facts, intended appellant to rely on its oral advice, and appellant relied on that advice. OTA also finds that appellant called FTB after the statute of limitations deadline had passed, and therefore, FTB's advice could not have induced appellant's filing after the statute of limitations period expired because it had already expired. Additionally, OTA finds that appellant was provided with correct written guidance regarding the statute of limitations in the February 12, 2024 notice. Therefore, the doctrine of equitable estoppel does not apply in these circumstances.

There is no reasonable cause exception to the statute of limitations. (See *Appeal of Benemi Partners, LP, supra.*) OTA notes that appellant’s representative contacted FTB a month after the statute of limitations expired. On February 12, 2024, FTB sent appellant a notice, Unclaimed Nonwage Withholding Credits, providing guidance on the statute of limitations period to file an amended return. Appellant had until May to inquire and file a timely amended return but waited until June to call FTB about the notice.

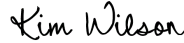
Based on the foregoing, appellant’s claim for refund for the 2019 tax year is barred by the statute of limitations.

HOLDING

Appellant’s claim for refund for the 2019 tax year is barred by the statute of limitations.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

Signed by:

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Kim Wilson
Hearing Officer

Date Issued: 10/27/2025