



2. After appellant failed to respond to the Demand for Tax Return, FTB issued a Notice of Proposed Assessment (NPA), which proposed an assessment of tax, a late filing penalty, a notice and demand penalty, a filing enforcement cost recovery fee, and interest.
3. The NPA became due and collectible, and FTB began collection action, which resulted in payments received between August 10, 2022, and October 26, 2022.
4. On February 15, 2025, appellant untimely filed a California Resident Income Tax Return for the 2019 tax year (Return). Appellant reported total tax of \$478, withholdings of \$5,847, and claimed a refund of \$5,369.
5. FTB accepted the Return and abated the late filing penalty and filing enforcement cost recovery fee and reduced the notice and demand penalty. FTB also determined that appellant had withholdings of \$1,566 instead of \$5,847. All of these adjustments resulted in an overpayment of \$3,453.51. FTB treated the Return as a claim for refund, which it denied because it was filed after the expiration of the statute of limitations.
6. This timely appeal followed.

#### DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. Generally, no credit or refund shall be allowed or made 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 language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Appellant filed his claim for refund on February 15, 2025. Appellant did not file within the extension period by October 15, 2020 (see R&TC, § 18567), thus barring his claim under the first four-year statute of limitations. Appellant also did not file by April 15, 2024, which is four years from the original filing deadline, barring his claim under the second four-year statute of limitations. Finally, appellant's last payment was made on October 26, 2022, and his withholdings are deemed paid on April 15, 2020 (see R&TC, § 19002(c)(1)), and appellant did not file his claim within one year of those dates, barring the claim under the one-year statute of limitations.

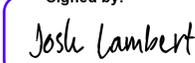
Appellant asserts that the statute of limitations is unethical. The law does not permit the suspending of the statute of limitations based on reasonable cause or equity.<sup>1</sup> (*Appeal of Benemi Partners, L.P., supra.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*) Furthermore, under Article III, section 3.5 of the California Constitution, OTA lacks jurisdiction to determine whether a California statute is invalid or unenforceable under the California Constitution, unless a federal or California appellate court has already made such a determination. (See also Cal. Code Regs., tit. 18, § 30104(a).) Therefore, 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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Josh Lambert  
Administrative Law Judge

Date Issued: 11/12/2025

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<sup>1</sup> R&TC section 19316(a) provides for a narrow exception under certain circumstances not relevant to this appeal.