

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240716885
D. GABRINER)
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)

OPINION

Representing the Parties:

For Appellant:	D. Gabriner
For Respondent:	Leoangelo C. Cristobal, Attorney Alisa Pinarbasi, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Gabriner (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,424.06 for the 2019 taxable year.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, John O. Johnson, and Asaf Kletter held a virtual oral hearing for this matter on October 8, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Is appellant’s claim for refund for the 2019 taxable year barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant late-filed a 2019 California Resident Income Tax Return on April 15, 2022, reporting total tax of \$4,812, California income tax withheld of \$2,144, and tax due of \$2,668.
2. Appellant paid \$3,588.07¹ on September 1, 2022, which satisfied the 2019 taxable year account balance.

¹ Appellant’s subsequently filed amended tax return reveals that appellant paid a late-filing penalty, interest, and fees in addition to the reported \$2,668 in tax due.

3. On May 15, 2024, appellant filed an amended return reporting a correction to appellant's adjusted gross income due to an error in the amount of deductions claimed on the original return. Appellant reported revised total tax of \$308 and requested a refund of overpaid tax, penalties, interest, and fees.
4. FTB accepted the amended return as filed and treated it as a claim for refund of \$5,424.06.²
5. FTB denied appellant's claim for refund due to the expiration of the statute of limitations.
6. Appellant filed this timely appeal.

DISCUSSION

With certain exceptions not at issue here, 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).) Taxpayers have the burden of proof to show entitlement to a refund and that the claim is timely. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*Ibid.*) If taxpayers fail to file a claim for refund within the statute of limitations, the claim is barred even if it is later shown that the tax was not owed in the first place. (*Ibid.*)

Appellant failed to file a 2019 tax return by April 15, 2020, the original due date for the return,³ or by the extended due date of October 15, 2020. (R&TC, §§ 18566, 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) Therefore, the first four-year statute of limitations period described in R&TC section 19306(a) is inapplicable because appellant did not file a return within an extension of time to file. Had appellant filed his original return any time between May 15, 2020, and the end of the *extension* period, October 15, 2020, his claim for refund filed on May 15, 2024, within four years of that filing date, would have been timely under the first four-year statute of limitations under R&TC section 19306. Appellant, however, filed his original

² California income tax withheld of \$2,144 plus payments of \$3,588.07 minus revised total tax of \$308.

³ Due to COVID-19, FTB postponed the original filing deadline for 2019 tax returns to July 15, 2020. (See *State Postpones Tax Deadlines Until July 15 Due to COVID-19 Pandemic*, news release (Mar. 18, 2020) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

return on April 15, 2022, two years after the original due date (not including any postponements or extensions).

The second four-year statute of limitations period runs from the original due date for appellant's 2019 return, and expired on April 15, 2024, which is four years from the original due date of the return on April 15, 2020. (R&TC, §§ 19306(a), 18566.) Appellant, however, filed the amended return on May 15, 2024, which is beyond the second four-year statute of limitations period prescribed in R&TC section 19306(a).

Regarding the one-year statute of limitations, appellants' withholding credits of \$2,144 are deemed paid on the original due date for the return, April 15, 2020. (R&TC, § 19002(c)(1).) Appellant also paid \$3,588.07 on September 1, 2022. Thus, to be within the one-year statute of limitations, appellant must have filed a claim for refund of withholdings on or before April 15, 2021. For the payment of \$3,588.07, appellant must have filed a claim for refund on or before September 1, 2023. Appellant filed the amended return after those dates, and therefore, appellant's claim for refund is also barred under the one-year statute of limitations.

Appellant contends the claim for refund is timely because FTB postponed the filing deadline for 2019 tax returns to July 15, 2020, so the second four-year statute of limitations period expired on July 15, 2024. Appellant asserts that because of the postponed filing deadline, "the last day prescribed for filing" under R&TC section 19306(a) was July 15, 2020. Appellant points out that "the original due date" for the return, which is the term used by FTB at the oral hearing, is not in the statute, and that a strict construction of the words "the last date prescribed" for filing means the postponed deadline, not the original due date for the return.

Appellant contends that Internal Revenue Code (IRC) section 7508A, to which California conforms through R&TC section 18572, and Treasury Regulation section 301.7508A-1(c)(1)(v), support appellant's interpretation of the statute of limitations. Appellant distinguishes *Appeal of Nguyen*, 2025-OTA-333P (*Nguyen*), asserting that the taxpayer in that case failed to meet the burden of proof. In that case, OTA held that FTB's postponement of the due date to July 15, 2020, due to the COVID-19 pandemic, did not change the original due date of April 15, 2020, upon which the four-year statute of limitations for refund claims is based. (*Nguyen, supra.*) OTA denied the taxpayer's claim in *Nguyen* because the law does not support an extension of the statute of limitations when a due date is postponed.

Appellant contends that, unlike in *Nguyen*, he is raising IRC section 7508A and the related treasury regulation, as well as IRS Notice 2023-21, all of which appellant claims support his position and serve to meet his burden of proof. IRS Notice 2023-21 applies to the federal statute of limitations found in IRC section 6511(a), which differs significantly from R&TC

section 19306(a). For federal purposes, the claim for refund or credit must be made within three years of the due date *plus the period of any extension of time for filing the return*.

(IRC, § 6511(b)(2)(A); italics added.)

On the other hand, California specifically provides the opposite, stating that four years from the last date prescribed for filing is determined *without regard to any extension*.⁴ (R&TC, § 19306(a); italics added.) While true that FTB followed the IRS postponement pursuant to IRC section 7508A, the federal guidance referenced by appellant does not support appellant's interpretation of R&TC section 19306. For example, Treasury Regulation section 301.7508A-1(b)(4) expressly states that a "postponement of a tax-related act does not extend the due date for the act" but merely allows the taxing agency to disregard a period of time for the taxpayer to act, and further states that "the postponement period will not change the due date for the return." In this case, FTB followed the federal postponement, which did not change the due date but merely allowed taxpayers additional time to complete acts such as filing returns or claims for refund during the postponement period. In other words, the *only* dates impacted by the postponement were due dates that fell within the postponement period.

Here, appellant fails to meet his burden because IRC section 7508A, Treasury Regulation section 301.7508A-1, and Notice 2023-21 (the authority cited) do not support an extension of the statute of limitations. Under applicable regulations, it is clear that a postponement expressly does not change the due date to perform tax filing acts. (Treas. Reg., § 301.7508A-1(b)(4).) Under the second four-year statute of limitations period, the return must have been filed within the time prescribed by, as relevant here, R&TC sections 18566 and 19306, which is April 15, 2024, or as otherwise stated, four years from the "original due date" for the return. Under the second four-year statute of limitations period, the due date is determined without regard to extensions or postponements. (R&TC, § 19306(a); *Nguyen, supra*.)

Lastly, appellant urges OTA to adopt "the logic" in *Appeal of Pomrehn*, 2025-OTA-269P (*Pomrehn*) that extended the time to file a claim for refund. In *Pomrehn*, FTB had postponed the time to act, including filing a claim for refund, for taxpayers affected by the California winter storms. FTB postponed the deadline to November 16, 2023, for any act that would otherwise

⁴ As noted by appellant on appeal, IRS Notice 2023-21 was created as an exception to the general rule that postponements do not change the original due date for the purpose of calculating the claim for refund statute of limitations. The Notice states, "absent the relief granted in this notice . . . taxpayers who did not receive an extension of time for filing a return must file a claim . . . within three years of the due date of the return (generally April 15, 2020 . . .)." California did not issue a similar exception to the general rule. Moreover, federal and state laws differ on this subject, e.g., the IRS requires taxpayers to request an extension of time to file while California provides for an automatic extension (Cal. Code Regs., § 18567(a)), and FTB is not bound to follow the IRS Notice.

have been due between December 27, 2022, and November 16, 2023. Without the postponement, the statute of limitations for taxable year 2018 would have expired on April 15, 2023. Since April 15, 2023, falls between December 27, 2022, and November 16, 2023, the taxpayer’s claim for refund filed on October 23, 2023, was timely.

In *Pomrehn*, OTA followed FTB’s postponement and allowed that taxpayer to file a claim for refund by November 16, 2023, instead of barring the claim that would otherwise have expired on April 15, 2023, if FTB had not postponed the time to act for taxpayers affected by the winter storms. In contrast, appellant’s deadline to file a claim for refund was April 15, 2024, at which time there was no applicable postponement, so appellant’s late-filed amended return is barred by the statute of limitations.

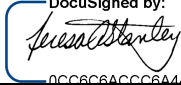
Based on the foregoing, appellant’s claim for refund is barred by the statute of limitations.

HOLDING

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

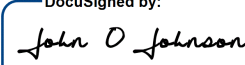
DISPOSITION

OTA sustains FTB’s denial of appellant’s claim for refund.

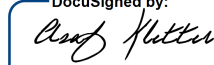
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Teresa A. Stanley
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 12/23/2025