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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
P. FREEMAN,) OTA NO. 241117905
)
)
 APPELLANT.)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:03 p.m. and concluding at 1:18 p.m. on
Thursday, January 15, 2026, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ GREG TURNER
Panel Members:	ALJ TERESA A. STANLEY HEARING OFFICER SETH ELSOM
For the Appellant:	P. FREEMAN KARMA WHELCHER
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD TRISTEN THALHUBER NANCY PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 6.)

(Department's Exhibits A-F were received into evidence at page 6.)

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California; Thursday, January 15, 2026

1:03 p.m.

JUDGE TURNER: Let's go on the record.

This is the Appeal of Freeman, OTA Case No. 24117905. The date is January 15th. The time is approximately 1:03 p.m. The hearing is being held electronically upon agreement of the parties.

As I mentioned I'm Judge Turner. I'll be the lead for purposes of conducting the hearing. My co-panelists, Judge Elsom and Judge Stanley are here, and they are equal participants in the deliberation and determining the outcome of this appeal.

If I can have the parties introduce themselves, starting with Appellant.

MS. FREEMAN: That's me.

MS. WHELCHER: Yeah. Go ahead. Go ahead.

MS. FREEMAN: Peggy Freeman.

MS. WHELCHER: I'm Karma Whelchel, CPA.

JUDGE TURNER: Respondent.

MR. THALHUBER: Good afternoon. This is Tristen Thalhuber, and with me is Brad Coutinho on behalf of Respondent Franchise Tax Board.

JUDGE TURNER: Excellent. Stated in the Minutes and Orders, our issue today is whether Appellant timely

1 filed a claim for refund for the 2019 tax year.

2 Is that everyone's understanding of what the
3 issue is today?

4 MS. FREEMAN: Yes.

5 MS. WHELCHER: Yes.

6 JUDGE TURNER: Excellent. Exhibits. Appellant
7 had submitted Exhibits 1 through 6, Respondent submitted
8 Exhibits A through F. No objection was made by other
9 party to the exhibits presented. I'm prepared to enter
10 those into evidence, unless there's an objection by the
11 parties right now. Do I have any objection from anyone on
12 the exhibits that were referenced in the Minutes and
13 Orders?

14 MS. FREEMAN: No.

15 JUDGE TURNER: Wonderful. Then those exhibits
16 will be entered into the record.

17 (Appellant's Exhibits 1-6 were received into
18 evidence by the Administrative Law Judge.)

19 (Department's Exhibits A-F were received into
20 evidence by the Administrative Law Judge.)

21 JUDGE TURNER: Witnesses. Appellants, Ms. Karma,
22 I believe you are representing the Appellant. Are you
23 intending that the Appellant present testimony today?

24 MS. WHELCHER: Yes.

25 JUDGE TURNER: Okay. Then we will --

1 Ms. Freeman, we will have to place you under oath before
2 your testimony begins, which I will do so momentarily.

3 Just as an order of conduct, Appellant, you'll
4 have 15 minutes to present your testimony. Respondent,
5 will have 15 minutes to reply, and you'll have 5 minutes
6 in rebuttal. We may have questions after the
7 presentation. There's an opportunity for Respondent to
8 ask questions of the witness, and so we'll provide that
9 opportunity when her testimony is complete. And then we
10 may have questions for Appellant or the witness or the
11 Respondent, just so you know, at the end of testimony. We
12 may or may not. And so just to be aware of that. You'll
13 have 5 minutes for closing remarks after the hearing.

14 So with that, before we begin your testimony,
15 your presentation of Appellant, I'd like to place --

16 Ms. Freeman, I'd like you to be sworn in as a
17 witness so that the testimony you're about to give can be
18 used as evidence by us in our deliberation.

19 MS. FREEMAN: Okay.

20 JUDGE TURNER: So with that, would you do me a
21 favor, please, and raise your right hand.

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P. FREEMAN,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE TURNER: Wonderful. You're testimony will be considered as evidence, and any testimony you give throughout the presentation today will be treated as testimony. So thank you for that.

And with that, Ms. Karma, I presume you'll be presenting the main arguments for Appellant. So if you would begin, you have 15 minutes.

PRESENTATION

MS. WHELCHER: Yes. So Peggy is going to go ahead and let you know the timeline of what happened for this appeal. Go ahead, Peggy.

WITNESS TESTIMONY

MS. FREEMAN: Sometime in 2024, my sister called me and said that she had received a letter from the State of California indicating that we had overpaid some taxes on my mother's -- the sale of my mother's home. I had not received the letter at that time. And so I said, "Well, what are we supposed to do?"

1 And she said, "I don't know." But she goes, "I'm
2 going to contact my tax preparer and take the paperwork to
3 her and see what we need to do."

4 And I do believe I finally did get my letter from
5 the State of California. I think it was February of 2024.
6 So my sister said, "You need to do the same. You need to
7 take that letter to your tax preparer, and have him, you
8 know, fill out these forms what-have-you."

9 And more information was needed from the escrow
10 company, which we did get. And I do believe that this
11 part of what you folks have there. And so I took it to my
12 tax preparer here, and he sat on it, and he sat on it, and
13 he sat on it, and he didn't do anything with it. And when
14 I contacted him, I said, "Where's the paperwork.
15 Where's -- what's going on with this?"

16 And he said, "I don't know how to make the
17 numbers match." So he said, "I can't do it."

18 So therefore, my sister and I both went back to
19 our 2020 -- or excuse me -- 2019 tax preparer that we --
20 that, you know, prepared that year's taxes, and he sent us
21 amendments to the 2019 tax prepare. And that is what we
22 sent to you folks, to California, but we were late. And I
23 was late because my tax preparer here sat on it and didn't
24 tell me he did not know what do with it.

25 And it was then that I contacted Karma after all

1 this went on, and she helped me with it. And my sister
2 and -- you know, so -- and she did the same, you know.

3 MS. WHELCHER: So your assessment -- the State of
4 California assessed that Peggy was late in her filing
5 because she did not file by the amendment until -- after
6 April of 2024. However, the statute section 186564 does
7 allow for a granting of an extension, which is an
8 automatic extension. So we are claiming that she should
9 have basically until October 15th of 2024 to file the
10 return.

11 Also, Code section 19306 also says that, unless
12 before the expiration of that period, the Franchise Tax
13 Board allows a credit, makes a refund, or mails a Notice
14 of Proposed Overpayment on the preprinted form prescribed
15 by the Franchise Tax Board. She received that notice the
16 end of February 2024 and, basically, had a month and a
17 half -- two months and a half to get something together to
18 contact her real estate people to get the form so she
19 could file the amendment. So she did not have enough
20 time. But she did receive that notice, and we feel that
21 she should have had more time until the
22 October 15th, 2024, filing deadline.

23 JUDGE TURNER: Is that the end of your
24 presentation?

25 MS. WHELCHER: Yes, that's the end. Thank you.

1 JUDGE TURNER: Okay. Ms. Freeman, I just had a
2 real quick question. I want to make sure. When you went
3 to your first CPA, was it -- I want to understand. You
4 said that they had advised you that they weren't capable
5 of filing the return, or that you didn't have claim to it?

6 MS. FREEMAN: Well, I -- well, I moved from
7 California to New Mexico. So it was my preparer here in
8 New Mexico that I gave the information to. And like I
9 indicated, he sat on it and did nothing with it. And
10 unbeknownst to me, not knowing tax stuff, after, you know,
11 I didn't hear from him, I finally got ahold of him; and he
12 said, "I cannot make the numbers match, so I can't do
13 anything with it."

14 So I was --

15 MS. WHELCHER: What -- what it was --

16 MS. FREEMAN: Excuse me.

17 MS. WHELCHER: Go ahead.

18 MS. FREEMAN: So I went and picked up the form.
19 And then, you know, I spoke with my sister about it, and
20 my sister told me. She goes, "My tax preparer told me to
21 go back to Dennis Cooper," who was our tax preparer in
22 2019, "and have him do it. Have him fix this up for us."

23 And so that's what we did. I went back to -- I
24 called him, and he told me to send him the work, the
25 stuff, and then he redid and sent it to me. And told me,

1 "Send it to California certified mail with signature." He
2 said, "You're already late," but he said, "it might help
3 if you send it certified mail with a signature."

4 And that's what I did.

5 JUDGE TURNER: Thank you.

6 Before I move onto my panel members, Respondent,
7 do you have any questions for the witness?

8 MR. THALHUBER: I do not have any questions.
9 Thank you.

10 JUDGE TURNER: Thank you.

11 Panel members, Judge Stanley, Mr. Elsom, do you
12 have any questions for either the -- on the presentation
13 or the witness?

14 HEARING OFFICER ELSOM: Hi. I did have one
15 question, and this would be for the tax preparer.

16 Ms. Karma, can you -- you had made a statement or
17 possibly this was the Appellant's. I just wanted to
18 clarify what you had -- what you had meant when you
19 referenced a preprinted form. Was this on an FTB letter,
20 or were you making a reference to a law or, you know, a
21 ruling or something of that nature?

22 MS. WHELCHER: I was --

23 HEARING OFFICER ELSOM: Can you just clarify?

24 MS. WHELCHER: Yeah. It was section 19306, which
25 talks about the period -- the extended period. And the

1 last paragraph on that is where it talks about mails and
2 Notice of Proposed Overpayment on a preprinted form. So
3 it's in -- it's actually in the Code section. I --

4 HEARING OFFICER ELSOM: Okay. But by that you're
5 referencing the unclaimed withholdings --

6 MS. WHELCHER: Correct.

7 HEARING OFFICER ELSOM: -- letter. Okay.

8 MS. WHELCHER: Yes.

9 HEARING OFFICER ELSOM: Okay. Thank you. That
10 was my only question.

11 JUDGE TURNER: Ms. Stanley?

12 JUDGE STANLEY: This is Judge Stanley speaking.

13 I do have one clarification question for Ms. Freeman.

14 You said that it was withheld on the sale of your
15 mother's house. How did it get reported under your social
16 security number?

17 MS. FREEMAN: Well, my mom passed away. So the,
18 you know, the home went to my sister and I when she left.
19 And I just don't quite understand, you know, the question.
20 I mean, my social security is on all of my tax forms, you
21 know.

22 JUDGE STANLEY: Okay. So the house was sold
23 after it was transferred to you and your sister?

24 MS. FREEMAN: Correct. Yes.

25 JUDGE STANLEY: Okay. Thank you. That explains

1 it.

2 JUDGE TURNER: Respondent, you have 15 minutes to
3 present your side.

4 MR. THALHUBER: Thank you, Judge Turner.

5

6 PRESENTATION

7 MR. THALHUBER: Again, this is Tristen Thalhuber
8 on behalf of Respondent Franchise Tax Board.

9 The issue in this appeal is whether the Appellant
10 has established that she filed a timely claim for refund
11 for the 2019 tax year prior to the expiration of the
12 statute of limitations. Unfortunately, the evidence will
13 show she did not as to the barred over payment.

14 Appellant timely filed her original 2019
15 California tax return on April 13th, 2020. And as such,
16 the four-year statute of limitations expired on April
17 15th, 2024. Appellant filed her claim for refund in the
18 form of an amended 2019 tax return over a month after the
19 four-year statute of limitations period expired. The only
20 payment on Appellant's 2019 tax year account is her
21 withholding credit, which is deemed paid on the original
22 due date of her 2019 tax return and thus, the one-year
23 statute of limitations is unavailable to allow a refund of
24 the overpayment for the 2019 tax year.

25 Appellant contends that her tax preparer

1 overlooked the relevant withholding credit on the closing
2 statement of her 2019 California property sale and that
3 FTB did not notify Appellant of her unclaimed withholding
4 credit. However, reliance on a tax preparer does not
5 negate a taxpayer's responsibility to file a timely claim,
6 and does not extend the statute of limitations.
7 Furthermore, FTB has no duty to discover a taxpayer's
8 overpayment or notify taxpayers of such overpayments. In
9 its precedential opinion in the Appeal of Benemi Partners,
10 the Office of Tax Appeals held that the language of the
11 statute of limitations is explicit and must be strictly
12 construed.

13 The Appellant has not provided any evidence that
14 would allow FTB, by law, to grant her claim for refund.
15 And therefore, FTB requests that the Office of Tax Appeals
16 sustain its claim for refund denial for the 27 -- excuse
17 me -- the 2019 tax year.

18 Thank you, and I'm happy to answer any questions.

19 JUDGE TURNER: Thank you for that.

20 Panel members, any questions for Respondent?

21 HEARING OFFICER ELSOM: No questions from me.

22 Thank you.

23 JUDGE STANLEY: This is Judge Stanley speaking.

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

25 JUDGE TURNER: Thank you.

1 Appellant, back to you. Five minutes for closing
2 remarks.

3

4 CLOSING STATEMENT

5 MS. WHELCHER: Yes. So we do -- we do not
6 dispute that the tax return was filed -- the amended tax
7 return was filed a month after the original due date.
8 However, the statute of limitations does give a -- a
9 little bit of leeway when it says that it will -- that it
10 can make a claim after the notice on a preprinted form
11 prescribed by the Franchise Tax Board. That is part of
12 the statute of limitations wording.

13 And that's -- that's all.

14 JUDGE TURNER: Thank you.

15 Well, we appreciate your participation in our
16 hearing today. We will consider this case submitted to us
17 on January 15th, 2026.

18 The record is now closed.

19 Thank you all for participating.

20 The judges will meet and deliberate and decide
21 your case, and we'll issue a written opinion within
22 100 days of today.

23 Today's hearing in the Appeal of Freeman is now
24 concluded.

25 Thank you for coming.

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(Proceedings concluded at 1:18 p.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 12th day of February, 2026.

ERNALYN M. ALONZO
HEARING REPORTER