

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 240716630  
M. MERRILL AND )  
J. MERRILL )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: M. Merrill  
J. Merrill

For Respondent: Shah Khan, Program Specialist  
Nancy Parker, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Merrill and J. Merrill (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$8,908 for the 2019 tax year.

Office of Tax Appeals (OTA) Panel Members Hans Famularo, Amanda Vassigh, and Kim Wilson held a virtual oral hearing for this matter on November 18, 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**

Whether the statute of limitations bars appellants' claim for refund for the 2019 tax year.

**FACTUAL FINDINGS**

1. By letter dated February 21, 2024, FTB notified appellants that, based on FTB's records, appellants may be entitled to nonwage withholding credits of \$8,907.75. FTB advised appellants that it had no record of having received appellants' California income tax return for 2019, and that appellants must file a tax return to claim a refund or credit by the applicable statute of limitations date.
2. Appellants untimely filed their 2019 California tax return on May 15, 2024.

3. Appellants reported an overpayment due in the amount of \$8,908.
4. FTB processed the return, revising the withholding credit to a withholding at source credit. FTB treated the tax return as a claim for refund.
5. FTB subsequently issued a letter to appellants explaining that their tax return had been processed, and, although their account showed an overpayment, FTB could not issue them a refund or credit because the statute of limitations had expired.
6. Appellant timely filed this appeal.

### DISCUSSION

R&TC section 19306 sets forth the statute of limitations for filing a claim for refund. R&TC section 19306(a) provides, in part, that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the tax return was filed, if the tax return was timely filed within the extended filing period pursuant to R&TC section 18567 or 18604 (whichever is applicable); (2) four years from the due date prescribed for filing the tax return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment. The taxpayer has the burden of proof in showing entitlement to a refund and that the claim for refund is timely. (*Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P.)

The language of R&TC section 19306 is explicit and must be strictly construed without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars the taxpayer from doing so later, even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) This is 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; *Appeal of Benemi Partners, L.P.*, *supra*.) While fixed deadlines may appear harsh because they can be missed, the resulting occasional harshness is redeemed by the clarity imparted. (*Appeal of Benemi Partners, L.P.*, *supra*.)

Because appellants did not file a timely tax return, the applicable four-year statute of limitations in this appeal is four years from the last day prescribed for filing the tax return (without regard to any extension of time to file)<sup>1</sup> or one year after the date of the overpayment. (R&TC, § 19306(a).) The four-year statute of limitations period expired on April 15, 2024 (four years from the filing due date of April 15, 2020). Appellants did not file a claim for refund

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<sup>1</sup> For the 2019 tax year, due to COVID-19, the filing due date was postponed to July 15, 2020. However, this does not change the original due date of April 15, 2020, upon which the four-year statute of limitations for refund claims is based. (*Appeal of Nguyen*, 2025-OTA-333P.)

(in the form of their 2019 tax return) until May 15, 2024. Appellants' claim for refund is therefore barred under the four-year statute of limitations period.

The one-year statute of limitations only applies to payments made within one year of the date when the claim for refund is filed. (R&TC, § 19306(a).) Since withholding credits are deemed to be paid on the original due date of the return, the one-year statute of limitations expired on April 15, 2021. (R&TC, § 19002(c)(1), (d)(2).) Accordingly, the one-year statute of limitations period for appellants' withholding payment of \$8,908 expired on April 15, 2021. Since appellants filed the claim for refund on May 15, 2024, the claim for refund is also barred under the one-year statute of limitations.

Appellants' arguments are equitable in nature. Appellant M. Merrill testified that he was managing his mother-in-law's estate and that appellants were "unaware that there was any issue with the withholding or the refund due." He further testified that once "[he] became aware of the matter, [he] acted immediately, submitting everything by certified mail without delay." Appellants contend that FTB did not properly notify them of their filing requirement or the deadline to claim a refund.

OTA finds appellants credible and sympathizes with their situation. However, appellants' personal hardships and unawareness of their California return filing requirement does not establish reasonable cause or an equitable basis to suspend the statute of limitations. (See *Appeal of Benemi Partners, L.P., supra.*) FTB does not have an obligation to inform a taxpayer of the time within which a claim must be filed. (*Appeal of Matthiesen* (85-SBE-077) 1985 WL 15856.) FTB also has no duty to discover a taxpayer's overpayment or to notify the taxpayer of such overpayment. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.)

OTA can only grant relief where the law specifically allows. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) As explained above, the language of the statute of limitations must be strictly construed, and the law does not provide a reasonable or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P., supra.*) Since appellants' claim for refund is barred by the statute of limitations and appellants have not provided any legal basis for relief, OTA cannot allow the claim for refund.

HOLDING

The statute of limitations bars appellants' claim for refund for the 2019 tax year.

DISPOSITION

FTB's action is sustained.

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*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

We concur:

Signed by:  
*[Signature]*  
E407D7E70D3E41C...  
Hans Famularo  
Administrative Law Judge

Signed by:  
*Kim Wilson*  
4E8F730EDB984CD...  
Kim Wilson  
Hearing Officer

Date Issued: 1/27/2026