OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

P. FREEMAN

OTA Case No. 241117905

OPINION

Representing the Parties:

For Appellant: Karma Welchel, CPA
P. Freeman

For Respondent: Tristen Thalhuber, Attorney
Brad Coutinho, Assistant Chief Counsel

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Freeman (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of $8,492 for the 2019 tax year.

Office of Tax Appeals (OTA) Panel Members Greg Turner, Teresa A. Stanley, and Seth Elsom held a virtual oral hearing for this matter on January 15, 2026. 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 appellant timely filed a claim for refund for the 2019 tax year.

FACTUAL FINDINGS

1. Appellant sold California real property in November of 2019. From the escrow on that sale, the amount of $8,491.50 was paid as withholding to respondent, as indicated on Form 593, Real Estate Withholding Tax Statement.
2. On April 13, 2020, appellant timely filed Form 540NR, 2019 California Nonresident or Part-Year Resident Income Tax Return (return). The return noted an adjusted gross income (AGI) loss, zero taxable income, and zero tax due. The return did not reflect amounts paid to respondent pursuant to Form 593 for withholding on the sale of appellant's real property during the 2019 tax year.

3. Respondent accepted and processed the return as filed.
4. On February 12, 2024, respondent issued an Unclaimed Nonwage Withholding Credits notice advising appellant of the unclaimed withholding credit on file for the 2019 tax year and the statute of limitations.
5. On May 29, 2024, appellant filed an amended 2019 return claiming the withholding credits and reporting an overpayment of $8,492.
6. Respondent accepted and processed the return and treated it as a claim for refund.
7. On September 3, 2024, respondent issued a Statute of Limitations notice denying appellant's claim for refund.
8. This timely appeal followed.

DISCUSSION

Taxpayers have the burden of proof to show entitlement to a refund and that the claim for refund is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Bindley*, 2019-OTA-179P.) R&TC section 19306 imposes a statute of limitations to file a claim for refund. R&TC section 19306(a) provides 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 return was filed, if the return was timely filed within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard to any extension of time for filing the return); or (3) one year from the date of the overpayment.

Because appellant filed their 2019 original return prior to the due date, the applicable statute of limitations is four years from the original due date of the return which was April 15, 2020.[1] Consequently, the statute of limitations for filing the claim for refund for the 2019 tax year expired on April 15, 2024, before May 29, 2024, when appellant filed the amended 2019 return that was treated by respondent as the claim for refund.

The one-year statute of limitations applies to claims for refund made within one year of the date payment is made. (R&TC, § 19306(a).) For the purposes of R&TC section 19306(a), however, tax withholdings are deemed paid on the due date of the return. (R&TC, § 19002(c)(1).) Because the payments sought for refund here were solely from nonwage

[1] Although the normal filing deadline for the 2019 tax year was *postponed* to July 15, 2020, due to the COVID-19 pandemic, this did not change the original statutory due date of the return which is the basis for calculating the expiration of the four-year statute of limitations. (*Appeal of Nguyen*, 2025-OTA-333P.)

withholding, and the due date of the return was April 15, 2020, the one-year statute of limitations expired on April 15, 2021.

Appellant's primary contention on appeal is that the withholding credits were not claimed on the original 2019 return due to an oversight by her former tax preparer. Appellant further notes that the oversight was not discovered until she received respondent's Unclaimed Nonwage Withholding Credits notice in 2024. While appellant immediately sought assistance of a professional advisor, the advisor appeared to struggle with the claim and consequently delayed his filing. When appellant ultimately resolved the delay of their preparer, appellant promptly filed her amended return.

However, the language of R&TC section 19306 is explicit and strictly construed. (*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.) Except for narrow circumstances associated with financial disability, which appellants have not alleged here,[2] a taxpayer's failure to file a claim for refund within the statutory period bars a refund. (*Ibid*.) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid*.) The statute of limitations may appear harsh, and there is generally no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347; *Appeal of Benemi Partners, L.P.*, *supra*.) The ill health of a taxpayer, the oversight of a tax professional, or any other unfortunate circumstances cannot extend the statute of limitations for filing a claim for refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Furthermore, respondent has no duty to discover, or provide notice of, a taxpayer's overpayments or of a pending statute of limitations. (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Consequently, regardless of whether respondent's Unclaimed Nonwage Withholding Credit notice arrived in 2024, it is not a basis upon which relief can be granted for appellant's failure to satisfy the statute of limitations. OTA does not have the authority to grant the relief sought by appellant.

Consequently, appellant's claim for refund is barred under the statute of limitations.

[2] R&TC section 19316(a) provides that the time for filing a claim for refund may be suspended if an individual taxpayer is "financially disabled," as defined in R&TC section 19316(b).

HOLDING

Appellant did not timely file a claim for refund for the 2019 tax year.

DISPOSITION

Respondent's action denying appellant's claim for refund is sustained.

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

We concur:

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

Date Issued: 3/25/2026