The Precedential Decisions of the California Office of Tax Appeals from the First Half of 2025: Themes in Timeliness, Jurisdiction, and Equity

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I. Introduction

In California, not all written decisions published by the Office of Tax Appeals (OTA) carry the same weight. Only those designated as precedential—after a formal process established in California Code of Regulations, Title 18, Section 30502—serve as binding guidance in future appeals. An opinion becomes precedential only if it introduces a new legal interpretation, resolves conflicts, addresses a matter of ongoing public importance, or significantly contributes to tax law. OTA's Chief Counsel, in consultation with OTA staff, determines which opinions should be precedential. Each opinion determined to be precedential is published as *"Pending Precedential,"* subject to public comment, and then designated as either Precedential or Nonprecedential. Members of the public may propose that any opinion be given precedential effect. In the first half of 2025, the OTA granted precedential status to five opinions:

- Three cases on the four-year statute of limitations for refund claims, two of which emphasize adherence to the four-year statute of limitations for refund claims (including when a refundable credit, such as the Earned Income Tax Credit, is deemed paid for purposes of the refund limitations period) and the third, which distinguishes a postponement and an extension to file tax documents.
- An opinion reaffirming that jurisdiction vests in the OTA when a taxpayer perfects a claim at the time of filing—even if the FTB later issues an erroneous refund.
- A Business Tax opinion confirming that a de facto corporate officer can be held personally liable for unpaid sales tax under R&TC § 6829, even without formal authority, if they acted in a role with tax compliance responsibilities.

Despite policy appeals for equitable relief, these precedential opinions underscore a clear refrain: in California tax law, procedural compliance trumps equitable arguments. These decisions underline that timely filing and rigid statutory scrutiny dominate OTA's jurisprudence.

II. Franchise and Income Tax

1. *Appeal of T. Nguyen* (2025-OTA-333P): COVID Postponement Does Not Extend Refund Statute

In *Appeal of Nguyen*, the OTA addressed a recurring issue for pandemic-era filers: whether the extended 2020 tax deadlines postponed by the Franchise Tax Board (FTB) due to COVID-19 also delayed the expiration of the four-year statute of limitations for refund claims. The answer, as this precedential opinion makes clear, is no.

The taxpayer, T. Nguyen, filed a 2019 California income tax return on May 9, 2024, claiming a refund of $2,487 based on excess withholding. But the FTB denied the refund on the ground that it was time-barred under Revenue and Taxation Code (R&TC) Section 19306(a), which requires refund claims to be filed within the later of:

1. Four years from the date the return was filed, if the return was timely filed under an extension of time to file;
2. Four years from the last date prescribed 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 (here, deemed paid on the return's due date under R&TC § 19002(c)(1)).

Because the original 2019 return was due April 15, 2020, both the four-year and one-year deadlines expired April 15, 2024. Nguyen's filing came three weeks late. Nguyen argued that the 2020 COVID postponement extended the filing deadline to July 15, 2020.

OTA rejected Nguyen's argument. Citing Treasury Regulation § 301.7508A-1(b)(4), the panel emphasized that postponement periods for disaster relief do not change the statutory due date of a return for purposes of statutes relying on "the date a return is due to be filed." Even though California adopted the IRS's COVID relief under R&TC § 18572(b) (which incorporates IRC § 7508A), that relief only extended the time for *performing tax-related acts*—not the original due date used to calculate refund limitations.

The opinion reiterates that withholding credits are deemed paid on the original due date, not the extended filing date. As a result, both the one-year and four-year windows had closed before Nguyen filed the return. OTA held that the refund claim was untimely and therefore barred.

Practitioner Takeaway

This decision underscores a critical nuance: postponed deadlines under disaster relief provisions may extend the time to file—but not the time to seek a refund. The statutory lookback periods in R&TC § 19306 remain tethered to the original return due date unless the Legislature or the regulation explicitly states otherwise.

The same is true for the federal level. Even though Notices may postpone certain return filing due dates (for example, in disaster cases), those notices do not extend the time for filing the

returns because a postponement is not an extension. As a result, the postponements do not lengthen the lookback periods under IRC § 6511(b)(2)(A).

Tax advisors should not assume that IRS or FTB announcements extending filing dates will automatically affect statutes of limitation for refund claims. As *Nguyen* confirms, absent statutory text to the contrary, such extensions do not protect a late refund claim, even if caused by a once-in-a-century pandemic.

2. *Appeal of S. Sotelo* (2025-OTA-035P): When Is a Refundable Credit "Paid?"

In *Appeal of Sotelo*, the OTA tackled a novel question under California law: When is a refundable credit—specifically, the California Earned Income Tax Credit (EITC) under R&TC, § 17052 (based on but not identical to the Federal EITC under IRC § 32)—"paid" for purposes of the one-year statute of limitations? The OTA's answer in this precedential opinion solidifies that even refundable credits are subject to strict refund timing rules.

After the FTB received information that the appellant, Sotelo, may have earned income in 2017, the FTB issued a Demand For Tax Return in July 2019. The appellant did not respond, and the FTB issued a Notice of Proposed Assessment, estimating the appellant's income and proposing a tax assessment, including penalties and interest. Again, Sotelo did not respond.

Sotelo filed a 2017 California tax return on or around November 4, 2022, claiming a $1,176 EITC refund. The Franchise Tax Board (FTB) denied the refund on grounds that it was time-barred under R&TC § 19306(a).

Sotelo's 2017 return was due April 15, 2018. Having filed in late 2022, she missed the four-year window. Her fallback argument was that since the EITC is a refundable credit, it should be considered "paid" on the date she filed her return—November 4, 2022—thus triggering a fresh one-year window.

The OTA disagreed. In a case of first impression in California, the panel analyzed whether the EITC is "paid" when the return is filed or when it was originally due. Looking to federal law for guidance, OTA found persuasive authority in the Second Circuit's decision in *Israel v. United States*, 356 F.3d 221 (2d Cir. 2004), which held that refundable credits like the federal EITC are "deemed constructively paid" on the original due date of the return, not when the return is eventually filed. The Second Circuit reasoned that there should be no difference between overpayments due to EITCs and overpayments due to withholdings (which are deemed paid on the due date of the return).

Finding the Second Circuit's reasoning persuasive, OTA determined that the EITC overpayment claimed by Sotelo was deemed paid on April 15, 2018. Since the claim for refund was filed more than one year later, in November 2022, it was time-barred. In reaching

this conclusion, OTA noted that treating refundable credits as "paid" upon filing would effectively nullify any statute of limitations for those credits. Taxpayers could file decades late and still claim refunds—an outcome that would defeat the purpose of having limitations periods.

Though FTB agreed to refund a small unrelated payment of $217.65 made in 2023 (within the one-year lookback period), the bulk of Sotelo's claim—the EITC—was denied.

Practitioner Takeaway

Appeal of Sotelo establishes that California's EITC is governed by the same lookback principles as withheld taxes or estimated payments: the overpayment is considered made on the original due date of the return. This means that refund claims involving refundable credits must still comply with the one-year or four-year limitations periods under R&TC § 19306—there is no separate timing rule based on when the credit is claimed.

3. *Appeal of R. Pomrehn* (2025-OTA-269P): Disaster Relief Can Save an Otherwise Late Refund Claim

After back-to-back taxpayer defeats in *Nguyen* and *Sotelo*, *Appeal of Pomrehn* provides a rare win for the taxpayer—thanks to timely reliance on disaster-related relief. In this precedential decision, the OTA confirmed that when California conforms to IRS postponement periods that expressly extend the period for filing refund claims due to a federally declared disaster, the extension applies to the statute of limitations for filing California refund claims.

R. Pomrehn filed a 2018 California return on October 13, 2023, reporting an overpayment of $3,763. Ordinarily, that filing would have been six months too late, as the four-year statute of limitations under R&TC § 19306(a) expired April 15, 2023. The FTB initially denied the refund, and Pomrehn appealed.

But unlike other taxpayers caught by hard deadlines, Pomrehn lived in Humboldt County—one of the counties covered by federal disaster declarations following the severe 2023 California winter storms. The IRS issued Notices CA-2023-01 and CA-2023-02, which extended time-sensitive deadlines, including for refund claims, through November 16, 2023, for affected taxpayers.

Pomrehn's refund claim—filed in October 2023—fell squarely within that extended deadline. Importantly, the OTA emphasized that California had formally conformed to these federal postponement periods. In a public release, the FTB expressly stated that it "generally conforms to the IRS postponement periods for presidentially declared disasters."

Because the original deadline of April 15, 2023, fell within the federal postponement window (December 27, 2022, to November 16, 2023), OTA held that the refund claim was timely under the extended limitations period.

Practitioner Takeaway

Pomrehn highlights a subtle but critical distinction in how disaster postponements interact with refund statutes: postponement relief can extend the end of the limitations period—but not the beginning of the lookback window. In *Nguyen*, the taxpayer misapplied the effect of COVID postponements, which did not alter the starting point for the lookback under R&TC § 19306; the refund claim was late because the beginning is the due date plus applicable extensions, not postponements.

In contrast, *Pomrehn* involved a taxpayer whose ending limitations period was extended because a federal disaster declaration postponed the deadline for taking refund-eligible actions—and California conformed to that postponement. The taxpayer filed within the extended window, preserving the claim.

The key takeaway: postponement relief may extend the deadline to file a refund claim—but it does not change when the period to claim a refund starts.

4. *Appeal of T. and S. Leebow* (2025-OTA-426P): Jurisdiction Secured by Timely Payment, Not Later Refund Error

In *Appeal of Leebow*, the OTA addressed an increasingly relevant issue for both taxpayers and practitioners: when is a claim for refund "perfected" such that the OTA has jurisdiction to hear an appeal? In a precedential opinion, the OTA held that a claim is perfected once all amounts due are paid—even if the Franchise Tax Board (FTB) later issues an erroneous refund.

T. and S. Leebow timely filed their 2021 nonresident California return, reporting tax due of $660,018, and paid the full balance, including penalties and interest which they paid by October 15, 2022. A few months later, the FTB issued a Notice of Tax Return Change, imposing additional penalties, which the appellant paid, including interest, by August 23, 2023. Shortly thereafter, on September 1, 2023, they filed a refund claim for $78,537.88, seeking abatement of tax penalties and interest based on reasonable cause. FTB denied the claim four days later. Then, two months after the claim had already been denied, FTB issued a $42,898.34 refund check, which it later determined was sent in error and asked the taxpayers to repay. After the FTB issued the refund check but before the FTB demanded repayment, the appellants filed their appeal.

FTB challenged OTA's jurisdiction, arguing that the claim had become "unperfected" because the erroneous refund had not been repaid. The OTA disagreed. The panel

emphasized that jurisdiction is based on the facts at the time the claim is filed and denied. Under R&TC § 19322.1, a claim for refund is "perfected" when the taxpayer has fully paid the tax, penalties, and interest due. The Leebows met that standard at the time they filed the claim for refund. A subsequent erroneous refund does not retroactively strip OTA of jurisdiction.

This ruling provides needed clarity on how OTA applies the perfection rule under § 19322.1 and related provisions, including R&TC §§ 19101(c) and 19164(g) (incorporating IRC § 6665(a)(2)).

While the Leebows succeeded on the threshold jurisdictional issue, they lost on the merits. OTA found no reasonable cause exception existed for the penalty for failure-to-pay estimated tax when due. While there is a reasonable cause exception for the late filing penalty, they failed to present evidence of what steps they took to ascertain their tax liability before the due date or that they acted like an intelligent prudent businessperson. Finally, the OTA found there was no statutory basis for abating interest, which is mandatory and not subject to a reasonable cause exception.

Practitioner Takeaway

Leebow offers two important takeaways. First, jurisdiction turns on whether the claim was perfected at the time it was filed—not on what happens afterward. A taxpayer's later refund or offset does not retroactively undo jurisdiction. Second, relief from penalties and interest remains extremely limited. Reasonable cause arguments, especially those based on income fluctuations or the pandemic, will fail without detailed, contemporaneous evidence that the taxpayer exercised sound financial judgment.

III. Business Tax

The Appeal of Monzon (2025-OTA-150P): Personal Liability for Sales Tax Debts Applies to De Facto Officers Too

In *Appeal of Monzon*, the OTA issued its only precedential opinion concerning business tax. Here, the OTA clarifies that a person who acts as a de facto corporate officer can be held personally liable for unpaid sales tax under R&TC § 6829, even if the individual claims not to have had final decision-making authority. The case is a strong reminder that titles, responsibilities, and conduct—not just formalities—drive liability.

R. Monzon was assessed more than $20,000 in unpaid tax and penalties via a Notice of Dual Determination after the closure of Prestige SNJ Xpress Auto Body of Lake Forest, Inc. CDTFA alleged that Monzon, although not a check-signer or majority owner, was the corporation's CFO in practice, if not in title. Monzon argued he lacked real authority and that all financial decisions came from another officer, A. Reynoso.

OTA rejected that defense, finding that Monzon was a "de facto CFO" who performed the duties of an officer and held himself out as such to both the California Secretary of State and CDTFA. Among other things, he electronically filed sales and use tax returns, was listed as CFO on five of the returns, remitted repayments for two returns, communicated regularly with CDTFA, and even negotiated payment plans. OTA held that these actions were sufficient to establish personal responsibility under R&TC § 6829, even though Monzon had no formal check-signing authority (however, checks appeared to be signed via signature stamp).

Under the statute, personal liability for a corporation's unpaid sales tax requires proof that (R&TC § 6829(a), (c); Cal. Code Regs., Tit. 18, § 1702.5(a), (b)):

1. The corporation's business has been terminated, dissolved, or abandoned;
2. The corporation collected sales tax reimbursement on its sales of tangible personal property and failed to remit such tax reimbursement to CDTFA when due;
3. The person had control or supervision of, or was charged with the responsibility for, the filing of returns or the payment of tax, or had a duty to act for the corporation in complying with the Sales and Use Tax Law; and
4. The person willfully failed to pay taxes due from the corporation or willfully failed to cause such taxes to be paid.

If the person is an officer or has an ownership interest in the entity, the CDTFA's burden of proof is by a preponderance of the evidence. If the person is not an officer or owner, he is presumed not to be liable and the CDTFA's burden of proof is by clear and convincing evidence.

Monzon conceded elements (1) and (2)—namely, that the business shut down and that tax was collected and not remitted. The only contested issues were whether he was "responsible" for sales tax compliance and whether he willfully failed to pay the tax.

The court defined a de facto officer as the following:

> A de facto officer is one who acts under the color of official title even though the legality of that title is deficient. (*Appeal of Treyzon,* 2023-OTA-399P.) But a solitary exercise of power, even under color of title, does not make one a de facto officer. (*Beraksa v. Stardust Records, Inc.* (1963) 215 Cal.App.2d 708, 714.) "To constitute such [a de facto] officer one must be in actual possession of the office and be exercising and discharging its functions and duties. He must hold office under some degree of notoriety, and exercise continuous acts of an official character." *(John Paul Lumber Co. v. Agnew* (1954) 125 Cal.App.2d 613, 619.)

OTA found that Monzon held himself out as the CFO and his repeated acts—such as signing returns, making electronic payments, and serving as CDTFA's point of contact—demonstrated sufficient authority. Although Monzon lacked check-signing rights and presented testimony that A. Reynoso made final decisions, OTA emphasized that actual conduct and access to payment tools mattered more than internal hierarchies.

Critically, OTA held that a de facto officer is subject to the same legal standard as a formal officer. As such, they are not entitled to the presumption that applies to non-officers pursuant to R&TC § 1702.5(e) that they are not personally liable. Because Monzon exercised the functions of CFO and held himself out as such, CDTFA only had to prove liability by a preponderance of the evidence, not the heightened "clear and convincing" standard reserved for employees without formal or functional officer roles.

The OTA found that Monzon acted willfully. It was undisputed that Monzon knew the tax was due and not paid. Monzon argued that he lacked the authority to have the tax paid. The evidence, however, showed that Monzon made electronic prepayments of tax on prepayment returns he filed as CFO, was the point person with the CDTFA about payment of the tax and negotiated payment plans with the CDTFA on behalf of the corporation. Thus, he had the authority to pay the tax and, resultingly, was willful.

Practitioner Takeaway

Monzon is now binding authority for two critical propositions:

1. De facto officers are treated the same as de jure officers for purposes of personal liability under § 6829.
2. CDTFA needs only show preponderance of evidence to establish liability against such officers—even if they lacked check-writing authority or ultimate control. The presumption under R&TC § 1702.5(e) is not applicable.

Tax professionals advising corporate officers—or anyone functioning in that capacity—should:

- Warn clients that performing officer duties without a legal title still carries personal exposure;
- Emphasize the importance of avoiding personal involvement in tax reporting or payment decisions if they intend to disclaim authority;
- Recognize that statements by third parties about internal hierarchies may not overcome documentary evidence and the individual's own conduct.

Appeal of Monzon makes clear that taxpayers cannot insulate themselves from liability simply by pointing to a higher-up. Where responsibility was assumed—and authority was exercised—liability follows.

IV. Conclusion: Precision Over Equity

The OTA's precedential opinions in early 2025 reflect a clear trend: strict procedural compliance outweighs equitable considerations. Whether addressing late refund claims (*Nguyen*, *Sotelo*), disaster-related relief (*Pomrehn*), jurisdictional timing (*Leebow*), or personal liability for tax debts (*Monzon*), OTA has reaffirmed that deadlines matter, titles carry consequences, and technical rules govern outcomes.

For practitioners, the takeaway is straightforward: file on time, perfect claims before appealing, and be cautious assuming officer roles in distressed entities. Equity may earn sympathy—but not a reversal—when procedure is not followed.

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