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7 **BOARD OF EQUALIZATION**  
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of: ) **HEARING SUMMARY<sup>2</sup>**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **QUILLER BARNES AND** ) Case No. 717969  
13 **PATRICIA BARNES<sup>1</sup>** )

14 \_\_\_\_\_  
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	<u>Year</u>	<u>Claim</u>
	1996 <sup>3</sup>	For Refund
		\$21,963.40 <sup>4</sup>

16 Representing the Parties:  
17 For Appellants: Tax Appeals Assistance Program (TAAP)<sup>5</sup>  
18 For Franchise Tax Board: David Muradyan, Tax Counsel

20 <sup>1</sup> Appellants reside in Sacramento County.  
21 <sup>2</sup> The appeal was originally scheduled for oral hearing at the Board’s April 22, 2014 Sacramento Board meeting but was  
22 postponed to allow appellants additional time to prepare. The appeal was then rescheduled for the Board’s July 17-18, 2014  
23 Sacramento meeting.  
24 <sup>3</sup> The tax year on appeal is approximately sixteen years from the date the appeal was filed because appellants filed their  
25 amended return in 2012.  
26 <sup>4</sup> Appellants claimed in their appeal letter that the amount at issue was \$39,695.37, which they later changed in their reply  
27 brief to \$21,963.40, which is consistent with the amount indicated in the FTB’s opening brief. It appears that \$21,963.40 is  
28 the correct amount at issue, as reflected by the FTB’s Transcript Taxpayer Monetary printout for appellants’ 1996 tax year.  
(Resp. Opening Br., p. 1, fn. 3, exhibit A.)  
<sup>5</sup> Appellant-husband wrote the appeal letter. (Thereafter, appellant-wife was included in the appeal.) Tina Bae, from TAAP,  
filed the reply brief on appellants’ behalf. Board records indicate that Sophia Lumbang, from TAAP, is currently  
representing appellants.

1 QUESTION: Whether appellants' claim for refund is barred by the applicable statute of  
2 limitations.

3 HEARING SUMMARY

4 Background

5 Appellants filed a timely California joint tax return for the 1996 tax year.<sup>6</sup> The couple  
6 reported California adjusted gross income (AGI) of \$249,891, California taxable income of \$176,388, a  
7 total tax of \$17,394, and a balance due of \$15,009.<sup>7</sup> It appears that appellants remitted a payment of  
8 \$250 with their return.<sup>8</sup> (Resp. Opening Br., pp. 1-2, exhibits A, B and C.)

9 In 2012,<sup>9</sup> approximately fifteen years after filing their original 1996 California tax return,  
10 appellants filed a 1996 California amended return.<sup>10</sup> The couple reported on their amended return,  
11 California taxable income of \$21,449, a total tax of \$403, and an overpayment of \$16,973, and claimed a  
12 refund for that amount. (Resp. Opening Br., p. 2, exhibit D; Appeal Letter, attachment.)

13 The FTB accepted the return as filed and adjusted appellants' account accordingly. On  
14 January 30, 2013, the FTB issued a notice denying appellants' claim for refund in the amount of  
15 \$16,870.39, because the claim was not timely filed.<sup>11</sup> Upon a further review of appellants' 1996  
16 account, the FTB removed an amnesty penalty of \$5,093.01, which increased the credit on appellants'  
17 1996 taxable year to \$21,963.40 (i.e., \$16,870.39 + \$5,093.01). On February 7, 2013, the FTB issued a  
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20 <sup>6</sup> Due to R&TC section 19530 and the FTB's document retention policy, appellants' original 1996 state tax return was  
21 destroyed. The FTB's information is based on its electronically-stored data for appellants' 1996 tax year account. (Resp.  
22 Opening Br., p. 1, fn. 4, exhibits B and C.)

23 <sup>7</sup> On appellants' amended return, the couple reported an originally-reported total tax of \$17,376, and a balance due of  
24 \$15,241.

25 <sup>8</sup> It appears that appellants satisfied the originally-reported liability before filing the amended return.

26 <sup>9</sup> It is not clear if appellants filed their 1996 California amended return on April 15, 2012 or June 25, 2012, as discussed  
27 below.

28 <sup>10</sup> On the amended return, appellants indicate the following reason for the changes: "Corrected 1099R received was rollover  
confirmed by Putnam IRS rollover statement dated Jan. 1, 1999 that \$154,939.19 was rollover on 11-27-1996." (Appeal  
Letter, attachment.)

<sup>11</sup> According to the FTB, \$16,870.39 was the amount indicated on appellants' amended return. Board staff notes that the  
amended return included with appellants' appeal letter indicates a claim for refund for \$16,973. At the hearing, the FTB  
should be prepared to explain the \$102.61 difference between the amount indicated on appellants' amended return and the  
amount on the notice. (Resp. Opening Br., p. 2, fn. 6; Appeal Letter, attachment.)

1 notice denying appellants' claim for refund in the amount of \$21,963.40, because the claim was not  
2 timely filed. This timely appeal followed. (Resp. Opening Br., p. 2, exhibit E; Appeal Letter,  
3 attachments.)

#### 4 Contentions

##### 5 Appellants' Appeal Letter

6 Appellants contends that their tax representative completed the couple's 1996 tax return  
7 and "made a mistake in filing" the return. Appellants assert that their combined income in 1996 was  
8 \$86,636, which was the same as previous years, and that one "would think someone would have  
9 questions" concerning the "big change" in appellants' income from \$86,636 to \$249,891, since the FTB  
10 received a 1099R from appellant-husband's employer. Appellants argue that, "[a]t no point" did the  
11 FTB perform an audit to see why appellants' tax liability changed. Appellants contend that upon  
12 realizing that they had incorrectly included appellant-husband's IRA distribution as income on their  
13 original 1996 tax return, appellants tried correcting the mistake in 2000 and 2001, but were "told by the  
14 Government, IRS, FIB (sic), and [appellants'] Tax Professional" that the statute of limitations had  
15 expired. Appellants assert that, being told that the statute of limitations had expired, "force[d]" them to  
16 follow "Government orders" and make payments. Appellants contend that in 2012, they spoke with the  
17 FTB's tax advocate service and were "told to try" amending their 1996 tax return. Appellants assert that  
18 their amended tax return shows a \$403.00 tax liability for the 1996 tax year and, that through installment  
19 agreement plans and collections, appellants paid the FTB \$22,722.37 in taxes for the 1996 tax "on taxes  
20 not owed." Appellants contend that, while there was a mistake in filing their 1996 return, their "tax  
21 record up to this point beginning in 1996 was clear." Appellants argue that the statute of limitations  
22 "would only apply in this case if [appellants] owed." Appellants argue that they are entitled to their  
23 claim for refund of \$39,695.37 (i.e., \$16,973.00 as indicated on their amended return + \$22,722.37 in  
24 payments made toward appellants' 1996 tax account). (Appeal Letter, pp. 1-2, attachments.)

25 Appellants attached to their appeal letter: (i) a copy of appellants' 1996 California  
26 amended return; (ii) a 1099R from "PTG RETIREMENT SERVICES ADMINISTERED BY THE  
27 PRUDENTIAL," stating a gross distribution of \$154,939.19 and a taxable amount of zero, with a  
28 handwritten note on it stating that the "corrected 1099-R was received after tax return was filed";

1 (iii) an annual statement for tax year 1999 from Putnam Investments for an IRA rollover plan; (iv) the  
2 two notices from the FTB denying appellants' claim for refund; (v) a letter to appellants from the FTB  
3 dated October 26, 2011, in which the first page lists debits and credits for tax year 1998 and the second  
4 page lists payments made toward the 1996 tax year;<sup>12</sup> and (vi) a past due notice, dated June 25, 2004,  
5 that the FTB sent to appellants for tax years 1996 and 1998. (Appeal Letter, attachments)

6 Respondent's Opening Brief

7 The FTB first contends that appellants' claim for refund is barred by both the four-year  
8 and the one-year statutes of limitations. The FTB argues that a claim for refund must be filed within  
9 four years from the original due date of the return, four years from the date the return was filed (if filed  
10 within the extension period), or one year from the date of the overpayment, whichever is later. The FTB  
11 asserts that appellants filed their 1996 California amended return, which the FTB treated as a claim for  
12 refund, on April 15, 2012.<sup>13</sup> The FTB contends that the four-year statute of limitations for the 1996 tax  
13 year expired on April 15, 2001. Regarding the one-year statute of limitations, the FTB asserts that the  
14 deadline for the one-year statute of limitations is based on the date of the payment and that payments  
15 transferred from one year to another are effective as of the date of the transfer. The FTB asserts that  
16 appellants made three payments, totaling \$429.97, for the 1996 tax year during the one-year period  
17 preceding appellants filing a claim for refund. (Resp. Opening Br., p. 2, fn. 7.) First, on June 1, 2011, a  
18 payment in the amount of \$255.06 was transferred from appellants' 2009 tax year to their 1996 account.  
19 Upon the receipt of the amended return, this amount was credited back to appellants' 2009 account on  
20 January 9, 2013, and since a tax liability existed on appellants' 1998 account, that amount was

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22 <sup>12</sup> The second page of the October 26, 2011 letter lists sixteen bill payments made between April 25, 2006, and October 11,  
23 2010, totaling \$6,657.71, but denotes a "Total Credit" of \$22,722.37, as well as a "Total Debit" of \$42,969.23 and a "Total  
24 Balance" of \$20,246.86. Due to the discrepancy between listed payments and the "Total Credit," it appears that the  
25 October 11, 2010 letter is incomplete and possibly the provided first page (regarding tax year 1998) was not the correct first  
page that accompanied the provided second page (regarding tax year 1996). At the hearing, appellants should be prepared to  
provide the correct letter regarding tax year 1996 in its entirety.

26 <sup>13</sup> According to the FTB's "Returns Received Display" for appellants' account, it appears that appellants filed a 1996  
27 California amended return on June 25, 2012 (see Line 13), and on April 15, 2012 appellants filed a 2006 California amended  
28 return (see Line 7). While both dates fall outside the applicable four-year statute of limitations for the 1996 tax year, the  
same cannot be said for the applicable one-year statute of limitations (i.e., the June 1, 2011 payment of \$255.06 one-year  
statute of limitations expired on June 1, 2012, which falls within the the April 15, 2012 date, but expires before the June 25,  
2012 date). At the hearing, the FTB should be prepared to clarify the date appellants filed their amended return. (Resp.  
Opening Br., exhibit D.)

1 transferred and applied as a payment on appellants' 1998 account. (Resp. Opening Br., p. 2, exhibits A  
2 and F.) Second, on July 8, 2011, a payment in the amount of \$100.91 was transferred from appellants'  
3 2010 tax year to their 1996 account. Because the transfer occurred within one year of the receipt of the  
4 amended return, it was transferred back to appellants' 2010 account on January 9, 2013. Rather than  
5 refunding the credit to appellants, the FTB transferred the credit amount, plus interest, as a payment  
6 toward appellants' unpaid balance for the 1998 tax year. (Resp. Opening Br., p. 2, exhibits A and G.)  
7 As for the third payment, on February 16, 2012, a payment in the amount of \$74 was transferred from  
8 appellants' 2011 tax year to their 1996 account. Because the transfer occurred within one year of the  
9 receipt of the amended return, it was reversed and applied toward appellants' unpaid balance for the  
10 1998 tax year. (Resp. Opening Br., p. 2, exhibits A, H and I.) The FTB argues that, because the  
11 payments were applied to cover an existing liability from appellants' 1998 tax year, the payments may  
12 not be refunded to appellants. The FTB contends that all other payments were received more than  
13 one-year before April 15, 2012. (Resp. Opening Br., pp. 2-4, exhibits A, E, F, G, H, I, and J.)

14           The FTB asserts that the law does not provide for the waiver of the statutory period based  
15 on reasonable cause or extenuating circumstances. The FTB asserts that appellants' failure to file a  
16 claim for refund within the statutory period, for whatever reason, prevents them from doing so at a later  
17 date, even if it is later shown that the tax owed was substantially lower than what was reported on the  
18 original tax return. Citing *United States v. Dalm* (1990) 494 U.S. 596, the FTB notes that the  
19 United States Supreme Court reasoned that, unless a claim for refund is filed within the statute of  
20 limitations, a suit for refund may not be maintained, regardless of whether the tax is alleged to be  
21 erroneously, illegally, or wrongfully collected. The FTB further argues that fixed deadlines may be  
22 harsh but that the occasional harshness is redeemed by the clarity imparted, citing *Prussner v.*  
23 *United States* (7th Cir. 1990) 896 F.2d 218. The FTB asserts that the statute of limitations promotes  
24 fairness and practicality in the administration of an income tax policy, citing *Rothensies v.*  
25 *Electric Storage Battery Co.* (1946) 329 U.S. 296. (Resp. Op. Br., pp. 4-5.)

26           With regard to appellants' argument that in 2000 and 2001 they relied to their detriment  
27 on verbal advice from the FTB, the FTB contends that it appears appellants are making an equitable  
28 estoppel argument. The FTB argues that equitable estoppel is applied against the government only in

1 rare and unusual circumstances, when all of its elements are present, and its application is necessary to  
2 prevent manifest injustice. (Citing *Appeal of Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991;  
3 *California Cigarette Concessions, Inc. v. City of Los Angeles* (1960) 53 Cal.2d 865.) The FTB asserts  
4 that appellants have not met their burden of proving all four elements of equitable estoppel, which are:  
5 (1) the government agency must be shown to have been aware of the actual facts; (2) the government  
6 agency must be shown to have made an incorrect or inaccurate representation to the relying party and  
7 intended that its incorrect or inaccurate representation would be acted upon by the relying party or have  
8 acted in such a way that the relying party had a right to believe that the representation was so intended;  
9 (3) the relying party must be shown to have been ignorant of the actual facts; and (4) the relying party  
10 must be shown to have detrimentally relied upon the representations or conduct of the government  
11 agency. (Citing *Appeal of Western Colorprint*, 78-SBE-071, Aug. 15, 1978; *Strong v. County of*  
12 *Santa Cruz* (1975) 15 Cal.3d 720; *Appeal of Priscilla L. Campbell*, 79-SBE-035, Feb. 8, 1979.) The  
13 FTB contends that, where one of these elements is missing, there can be no estoppel. (Citing *Hersch v.*  
14 *Citizens Savings & Loan Assn.* (1983) 146 Cal.App.3d 1002, 1011.) The FTB contends that a taxpayer's  
15 tax liability must be based on the law rather than informal opinions expressed by the FTB's employees,  
16 and, therefore, reliance on the oral statements of FTB employees is not sufficient to create estoppel  
17 against the FTB, citing the *Appeal of Raymond E. and Joy Lecompte*, 89-SBE-025, decided  
18 September 26, 1989,<sup>14</sup> the *Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, decided May 4, 1976,  
19 and the *Appeal of Mary M. Goforth*, 80-SBE-158, decided December 9, 1980. The FTB also contends  
20 that the doctrine of equitable estoppel is not available to protest those who suffer a loss due to their own  
21 failure to act, citing the *Appeal of Baldar Industries*, 87-SBE-011, decided March 3, 1987. (Resp. Op.  
22 Br., p. 5.)

23           Concerning appellants' assertion that the FTB should have inquired as to why appellants'  
24 1996 taxable income significantly increased from previous years, the FTB contends that it is the  
25 taxpayer's burden to prove an entitlement to a refund/credit and it is not the FTB's responsibility to  
26 inform or alert taxpayers of the time within which a claim for refund must be filed. (Citing *Appeal of*  
27 \_\_\_\_\_

28 <sup>14</sup> Board of Equalization cases are generally available for viewing on the Board's website  
(<http://www.boe.ca.gov/legal/legalopcont.htm>).

1 *Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.) The FTB also asserts that it has no duty to  
2 discover overpayments and to inform taxpayers of such overpayments, citing the Board’s decision in the  
3 *Appeal of Manuel and Ofelia C. Cervantes*, 74-SBE-029, decided August 1, 1974. (Resp. Opening Br.,  
4 p. 4, exhibit J.)

5 Appellants’ Reply Brief

6 Appellants contend that the original initial 1099R form they received did not indicate that  
7 the IRA distribution in the amount of \$154,939 was a non-taxable rollover pension, and that appellants’  
8 tax preparer, in relying on the initial 1099R form, mistakenly included the rollover pension as taxable  
9 income for 1996. Appellants assert that after appellants’ tax preparer filed the couple’s 1996 tax return,  
10 appellant-husband received a corrected 1099R, which indicated that the \$154,939 was a non-taxable  
11 rollover pension. Appellants contend that, in 2000, appellant-husband realized that he was “wrongly  
12 taxed on his rollover pension,” and that, in 2000 and 2001, appellant-husband contacted the FTB “to  
13 rectify the error” his tax preparer made in including his rollover pension as taxable income. Appellants  
14 argue that the “FTB’s representative wrongly indicated that it was too late” for appellants to amend their  
15 1996 tax return and to file a claim for refund. Appellants assert that, while the “FTB may argue that  
16 [appellant-husband’s] correspondence [with the FTB] in 2001 could have taken place after” April 15,  
17 2001 (when the applicable four-year statute of limitations expired), it is “clear” that appellant-husband’s  
18 correspondence with the FTB in 2000 was within the statute of limitations. Appellants contend that  
19 appellant-husband “sought advice and relied on the tax expertise of an FTB representative, but he was  
20 told wrong procedural information.” Appellants argue that if the FTB had not misrepresented the  
21 information regarding the statute of limitations for amending and filing a refund claim, appellants would  
22 have filed a claim for refund within the statute of limitations. Appellants assert that, in 2012, they  
23 sought the assistance of FTB’s tax advocate service who advised appellants to file an amended 1996  
24 return. (App. Reply Br., pp. 1-3; Appeal Letter, attachments.)

25 Appellants assert that there is a two-part analysis to determine if estoppel should be  
26 applied against the government. (Citing *J. H. McKnight Ranch, Inc. v. Franchise Tax Board* (2003)  
27 110 Cal.App.4th 978.) Appellants contend that first, one must determine if the four required elements  
28 for an estoppel claim are present and, second, the court must weigh the equities and consider how

1 asserting estoppel against the government would impact public policy. (Citing *Strong v. County of*  
2 *Santa Cruz* (1975), *supra*; *J. H. McKnight Ranch, Inc. v. Franchise Tax Board* (2003), *supra*.)  
3 Appellants assert that, under the two-part inquiry, a government agency may face estoppel if it has  
4 “negligently or intentionally caused a claimant to fail to comply with a procedural precondition to  
5 recovery and denial of recovery would cause great hardship.” (Quoting *McKnight Ranch, Inc. v.*  
6 *Franchise Tax Board* (2003), *supra*.)<sup>15</sup> Appellants argue that the doctrine of equitable estoppel “rests  
7 firmly upon a foundation of conscience and fair dealing,” and that one may assert estoppel against the  
8 government “where justice and right require it.” (Quoting *Id.*) Appellants contend that, when a  
9 government agency has induced a private party to inaction through correspondence and verbal  
10 assurances, the government may be estopped from claiming failing to comply with procedures as a  
11 defense. (Citing *Id.*) (App. Reply Br., pp. 3-5.)

12 Appellants argue that they successfully prove the elements of equitable estoppel, as  
13 follows: (i) appellant-husband’s telephone conversations with FTB representatives in 2000 and 2001  
14 “show that the FTB was appraised of the facts” regarding appellants’ situation; (ii) appellants “had the  
15 right to believe the FTB, with its tax expertise, intended for [appellants] to follow its assertion that the  
16 statute of limitations had run”; (iii) appellants did not know that the statute of limitations had not passed;  
17 and (iv) appellants “relied on the FTB’s wrong information, resulting in their continued struggle to pay  
18 their 1996 tax liability and their denial for a refund claim.” As for the “second part of the inquiry,”  
19 appellants contend that one “must consider if estopping the government would impact public policy”,  
20 and that the “consideration of equity and justice permits [appellants] from estopping the FTB.”  
21 Appellants assert that, while procedural preconditions and limitations serve a strong purpose for  
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23 <sup>15</sup> In *McKnight Ranch, Inc.*, McKnight unsuccessfully filed a protest of the FTB’s assessment of unpaid tax, contending that  
24 the taxable measure was not taxable income under the tax benefit rule and the contested liability doctrine. In discussions  
25 with McKnight, the FTB reiterated the view that the tax was owed, but offered to deny the refund claim summarily so that  
26 McKnight could proceed in court. McKnight accepted the offer and filed suit. Later, the FTB conceded that under the  
27 contested liability doctrine, no tax was ever owed but that because of its summary denial of McKnight’s refund claim,  
28 McKnight failed to exhaust its administrative remedies and McKnight should be barred from a refund for procedural  
reasons. The court found that there was substantial evidence that the FTB introduced the possibility of an early termination  
of McKnight’s claim as a way to expedite resolution in court; therefore, the FTB could not argue that the early termination  
was insufficient and that McKnight was required to do more to exhaust its claims. The court also found the equities in favor  
of an estoppel compelling, stating that denial of an estoppel would permit the FTB to retain tax that was never owed by the  
taxpayer, while a ruling in favor of the taxpayer would not impair the public policy in favor of exhaustion of remedies  
significantly.

1 protecting efficient and accurate information, estoppel against the government would not defeat the  
2 policy for efficient administration when the government, itself, was responsible for the procedural  
3 default. (Citing *Id.*) Appellants contend that, in *McKnight Ranch, Inc.*, the court ruled that because the  
4 taxpayer never owed the money, equity and justice would allow the taxpayer from estopping the FTB's  
5 procedural limitation and preconditions. (Citing *Id.*) Appellants argue that their claim for refund is for  
6 taxes appellants never owed; therefore, "equity and justice should prevail, and estop the FTB from using  
7 the statute of limitations defense to retain the tax amount . . ." <sup>16</sup> (App. Reply Br., pp. 4-5.)

8 Appellants attached to their reply brief: (i) a letter from the FTB's taxpayer advocate  
9 office, dated August 10, 2012, listing payments applied to appellant-husband's tax account with the  
10 FTB, the effective dates of payment, payment status, tax year the payment was applied, and the payment  
11 type; (ii) a notice of tax lien the FTB sent to appellants, dated April 16, 2002, for tax years 1996 and  
12 1998; (iii) a temporary deferral notice that the FTB sent to appellant-husband, dated September 28,  
13 2009, notifying him that collection action would be delayed for six months for tax years 1996, 1998, and  
14 2006, due to financial hardship; and (iv) a temporary deferral notice that the FTB sent to appellants,  
15 dated October 26, 2011, notifying the couple that collection action would be delayed for one year for tax  
16 years 1996, 1998, and 2006, due to financial hardship. (App. Reply Br., Attachments.)

### 17 Applicable Law

#### 18 Burden of Proof

19 The FTB's determination is presumed correct and an appellant has the burden of proving  
20 it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,  
21 2001-SBE-001, May 31, 2001.) In the absence of uncontradicted, credible, competent, and relevant  
22 evidence showing an error in the FTB's determinations, respondent's determinations will be upheld.  
23 (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

#### 24 Statute of Limitations – Refund Claim

25 The general statute of limitations for filing a refund claim is set forth in R&TC  
26 section 19306. Under that statute, the last day to file a claim for refund is the later of:

27 \_\_\_\_\_  
28 <sup>16</sup> At the hearing, both parties should be prepared to discuss the court's ruling in *McKnight Ranch, Inc.*, and its applicability, if any, to this appeal.

- 1 1. Four years from the date the return was filed, if filed within the extended due date;
- 2 2. Four years from the due date of the return, without regard to extensions; or
- 3 3. One year from the date of the overpayment.

4 R&TC section 19322.1 provides for an informal claim for refund which tolls the statute  
5 of limitation time periods set forth in R&TC section 19306. An informal claim is perfected and deemed  
6 filed on the date that the full payment of tax is made. However, an informal claim must be made before  
7 the payment of the entire tax has been paid and before the statute of limitations time periods set forth in  
8 R&TC section 19306 expire.

9 The Board “has consistently held that the statute of limitations on claims for refund is  
10 explicit and must be strictly construed, without exception.” (*Appeal of James C. and Florence Meek*,  
11 2006-SBE-001, March 28, 2006; see also *Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15,  
12 1978; *Appeal of Earl and Marion Matthiessen, supra.*) Federal courts have stated that fixed deadlines  
13 may appear harsh because such deadlines can be missed, but the resulting occasional harshness is  
14 redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States, supra*;  
15 *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249.)

16 In the *Appeal of James C. and Florence Meek, supra*, the Board explained that it has  
17 “considered the doctrine of equitable tolling and, absent direction from the Legislature, [it] held that the  
18 statute of limitations in section 19306 is not subject to equitable tolling[.]” citing additional authorities.  
19 The Board therefore found that, “without specific statutory authority, [it] cannot waive or suspend the  
20 statute of limitations, and appellants’ claims for refund are barred.”

21 The only statute that provides for tolling of the statute of limitations is R&TC  
22 section 19316. R&TC section 19316, subdivision (a), suspends the limitations period specified in  
23 R&TC section 19306 during any period in which a taxpayer is “financially disabled.” Subdivision  
24 (b)(1) of R&TC section 19316, defines a “financially disabled” taxpayer as an individual who “is unable  
25 to manage his or her financial affairs by reason of a medically determinable physical or mental  
26 impairment that is either deemed to be a terminal impairment or is expected to last for a continuous  
27 period of not less than 12 months.” Subdivision (b)(2) of R&TC section 19316, provides that a taxpayer  
28 shall not be considered financially disabled for any period when his/her spouse or any other person is  
legally authorized to act on the taxpayer’s behalf in financial matters. To demonstrate the existence of a

1 financial disability, the taxpayer must submit a signed affidavit from a physician that explains the nature  
2 and duration of the taxpayer’s physical or mental impairments. (*Appeal of James C. and*  
3 *Florence Meek*, 2006-SBE-001, March 28, 2006.) In addition, the taxpayer must show that the period of  
4 financial disability overlaps the relevant limitations period. (*Ibid.*)

#### 5 No Duty to Inform

6 The Board has held that the FTB has no duty to discover overpayments made by a  
7 taxpayer (*Appeal of Manuel and Ofelia C. Cervantes, supra*), nor does the FTB have a duty to inform a  
8 taxpayer of the time within which a claim for refund must be filed to avoid the application of the statute  
9 of limitations. (*Appeal of Earl and Marion Matthiessen, supra.*)

#### 10 Doctrine of Equitable Estoppel

11 A government agency may be estopped to rely on the statute of limitations in denying a  
12 claim for refund where the agency’s erroneous advice has induced a claimant to delay filing until after  
13 the statute of limitations period expired. (*Appeal of Jerold E. Wheat*, 83-SBE-150, June 21, 1983.)  
14 However, equitable estoppel is applied against the government only in rare and unusual circumstances,  
15 when all of its elements are present, and its application is necessary to prevent manifest injustice. (See  
16 *Appeal of Richard R. and Diane K. Smith, supra; California Cigarette Concessions, Inc. v. City of*  
17 *Los Angeles, supra.*) The estoppel of the government in tax matters is available only in an “unusual  
18 case” in which the case is clear and the injustice is great. (*United States Fidelity and Guaranty Co. v.*  
19 *State Board of Equalization* (1956) 47 Cal.2d 384, 388-389; *Appeal of Priscilla L. Campbell, supra*  
20 [“Even if a taxpayer is misled by the action of the government, this factor alone is not sufficient to  
21 warrant application of the doctrine of estoppel.”])

22 The four elements of equitable estoppel are: (1) the government agency must be shown  
23 to have been aware of the actual facts; (2) the government agency must be shown to have made an  
24 incorrect or inaccurate representation to the relying party (and intended that its incorrect or inaccurate  
25 representation would be acted upon by the relying party or have acted in such a way that the relying  
26 party had a right to believe that the representation was so intended); (3) the relying party must be shown  
27 to have been ignorant of the actual facts; and (4) the relying party must be shown to have detrimentally  
28 relied upon the representations or conduct of the government agency. (*Appeal of Western Colorprint,*

1 *supra*; *Strong v. County of Santa Cruz, supra*; *Appeal of Priscilla L. Campbell, supra*.) Where one of  
2 these elements is missing, there can be no estoppel. (*Hersch v. Citizens Savings & Loan Assn., supra*.)  
3 Reliance on an informal opinion of an FTB employee is not a sufficient basis to create estoppel against  
4 the FTB. (*Appeal of Western Colorprint, supra*; *Appeal of Richard W. and Ellen Campbell,*  
5 *75-SBE-049, Aug. 19, 1975*.) In order to successfully assert estoppel against the government, a party  
6 must show affirmative misconduct going beyond negligence and amounting to “ongoing active  
7 misrepresentations” or a “pervasive pattern of false promises.” (*S & M Investment Co. v.*  
8 *Tahoe Regional Planning Agency* (9th Cir. 1990) 911 F.2d 324, 329; *Purcell v. United States*  
9 (9<sup>th</sup> Cir. 1993) 1 F.3d 932, 939.)

10 STAFF COMMENTS

11 Appellants filed their claim for refund for the 1996 tax year in 2012. Appellants’ 1996  
12 tax return was due April 15, 1997, pursuant to R&TC section 18566. The four-year statute of limitations  
13 began on April 15, 1997, and expired on April 15, 2001, pursuant to R&TC section 19306. According  
14 to the FTB’s records, the following credits were made to appellants’ 1996 tax account: (i) \$255.06 on  
15 June 1, 2011 (from appellants’ 2009 account); (ii) \$100.91 on July 8, 2011 (from appellants’ 2010  
16 account); and (iii) \$74.00 on February 16, 2012 (from appellants’ 2011 account). Each of these credits  
17 was then applied to appellants’ 1998 tax year liability. Consequently, none of these credits are available  
18 to refund to appellants.

19 With regard to tolling the statute of limitations for financial disability under R&TC  
20 section 19316, appellants have not alleged, and the current record does not support, that either appellant  
21 was “financially disabled” pursuant to R&TC section 19316. Therefore, the only potential statutory  
22 basis for equitable tolling of the statute of limitations is not available. (See *Appeal of James C. and*  
23 *Florence Meek, supra*.)

24 Appellants contend that they relied on oral advice provided by employees of the FTB  
25 and, therefore, that the doctrine of equitable estoppel should apply. Alternatively, appellants contend  
26 that the FTB should have noticed and corrected the overpayment. However, there is no statute  
27 extending the statute of limitations based on alleged oral advice by FTB employees or the failure of the  
28 FTB to notify a taxpayer of a potential overpayment. In the absence of such a statute, it is staff’s

1 opinion that there is no legal basis for the Board to waive or extend the statute of limitations for a tax  
2 refund based on alleged oral advice or other equitable considerations. (See *United States v. Brockamp*  
3 (1997) 519 U.S. 347; *Appeal of James C. and Florence Meek, supra.*) It appears to staff that  
4 *McKnight Ranch, Inc., supra*, which is cited by appellants, is not applicable because it did not extend the  
5 statute of limitations. Rather, it involved a dispute regarding whether the taxpayer's timely filed refund  
6 suit should be barred due to an alleged failure to exhaust administrative remedies.

7 Appellants and the FTB may wish to discuss, and provide evidence of, whether, prior to  
8 the filing of the amended tax return, appellants made any written communications to the FTB which  
9 might be considered a timely informal claim for refund.

10 Pursuant to California Code of Regulations, title 18, section 5523.6, if either party has  
11 any additional evidence to present, it should be provided to the Board's Board Proceedings Division at  
12 least 14 days prior to the oral hearing.<sup>17</sup>

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17 Evidence exhibits should be sent to: Khaaliq Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of  
Equalization, P.O. Box 942879 MIC: 80, Sacramento, California, 94279-0080.