

1 Josh Lambert
Tax Counsel
2 Board of Equalization, Appeals Division
450 N Street, MIC: 85
3 PO Box 942879
Sacramento, CA 95814
4 Tel: (916) 322-3284
Fax: (916) 324-2618
5

6 Attorney for the Appeals Division

7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **NOREEN B. SCHNEIDER RUCINSKI AND**) Case No. 789657
13 **FRED RUCINSKI**)
14 _____)

15 Year Claim for
2005 Refund
16 \$16,981.74

17 Representing the Parties:

18 For Appellants: Noreen B Schneider Rucinski and Fred Rucinski
19 For Franchise Tax Board: Marguerite Mosnier, Tax Counsel III
20

21 QUESTION: (1) Whether appellants have shown that they filed a timely claim for refund for the
22 2005 tax year.
23

24 HEARING SUMMARY

25 Background

26 The Franchise Tax Board's (FTB or respondent) Integrated Non-Filer Compliance (INC)
27 Program annually matches income records obtained from various reporting sources against filed tax
28 returns to identify individuals who may not have fulfilled their legal requirement to file a California

1 income tax return. As part of this program, respondent received information indicating that appellant-
2 wife earned income during 2005 that might require her to file a California tax return for that tax year.
3 However, respondent's records indicated that she had not filed a timely return.¹ As a result, respondent
4 initiated filing enforcement action by issuing a Demand for Tax Return (Demand) dated January 29,
5 2007, demanding that appellant-wife file a return or explain why no return was required. Respondent
6 subsequently issued a Notice of Proposed Assessment (NPA) dated August 27, 2007 which proposed an
7 assessment of additional tax of \$2,058.00, a \$514.50 late filing penalty, a \$514.50 notice and demand
8 (demand) penalty, a \$122.00 filing enforcement fee, and interest.² Appellant-wife did not file a protest
9 and the proposed assessment became a final liability. (Resp. Op. Br., p. 1; Exs. A & B.)

10 As part of the INC program, respondent also received information indicating appellant-
11 husband earned income during 2005 that might require him to file a California tax return for that tax
12 year.³ However, respondent's records indicated that he had not filed a timely return. As a result,
13 respondent issued a Demand dated July 30, 2007, and an NPA dated November 19, 2007. The NPA
14 proposed an assessment of additional tax of \$6,496, a \$1,624 late filing penalty, a \$2,233 demand
15 penalty, a \$122 filing enforcement fee, and interest. Appellant-husband did not file a protest and the
16 proposed assessment became a final liability. (Resp. Op. Br., pp. 1-2; Exs. C & D.)

17 Respondent issued Notices of Balance Due to appellants on March 1, 2008, and
18 appellants made payments of \$1,194.74 and \$10,751.00 on March 1, 2008. (Resp. Op. Br., p. 2; Ex. E.)

19 Appellants filed their 2005 California return (Form 540) on May 15, 2010, using a
20 married filing jointly status. Appellants reported no taxable income, no tax liability, withholding
21 payments of \$2,436, and estimated tax payments totaling \$14,546. Respondent processed this return
22 and accepted it as filed except with respect to the amount of estimated tax payments. Respondent
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25 ¹ Respondent received information reported on a federal Form 1098 that appellant-wife made mortgage interest payments of
\$59,848 to Washington Mutual Bank, F.A. in 2005. (Resp. Op. Br., Ex. B.)

26 ² The NPA estimated appellant-wife's income by multiplying her mortgage interest paid in 2005 by four. Respondent states
27 that this is the ratio formula used by the lending industry. Respondent states that it also applied to mortgage interest paid as
an itemized deduction. (Resp. Op. Br., Ex. B.)

28 ³ Respondent received information that appellant-husband earned wages of \$91,708 in 2005 from Coxcom, Inc. and received
taxable income from various sources, including Defense Finance and Accounting Service of \$26,795. (Resp. Op. Br., Ex. D.)

1 notified appellants that its records reflected it had received estimated payments totaling \$2,600.
2 Following respondent's adjustments, which included the abatement of the late filing penalties, demand
3 penalties and fees that had been imposed on appellants' respective NPAs, appellants' account had a
4 credit balance of \$16,981.74. Respondent was unable to refund or credit this overpayment due to the
5 expiration of both the four-year and one-year statutes of limitations. Respondent did not issue a notice
6 denying the claim for refund. Appellants deemed their claim denied and filed an appeal. (Resp. Op.
7 Br, p. 2; Exs. E, F, & G.)

8 Contentions

9 Appeal Letter

10 Appellants state that these events stem from an audit requested in 2003 and completed in
11 December of 2007. Appellants state that in 2005, they asked for a return to be filed by the government,
12 but that it was never done. Appellants state that they were instead told to file when the audit was
13 completed. Appellants state that they were always told that since they never owed any money and
14 always had funds that rolled over, they did not have to worry. Appellants state that the funds that are
15 rolled over should be applied to taxes owed. Appellants state that they have funds to be applied from a
16 2005 Form 1099 and a 2004 net operating loss (NOL) of over \$700,000. Appellants state that if the
17 government paid back \$135,000 for the overpayment in 2000, then there were funds that could have
18 been applied to 2005. Appellants state that appellant-wife suffered a life-changing accident in 2007
19 when she hurt her wrist. (Appeal Letter, p. 1; attachments.)

20 Appellants state that in 2004 their account had \$17,000 that should have rolled over to
21 2005. Appellants state that, the 2005 audit prevented other audits that they wanted for 2001 through
22 2004. Appellants state that there were funds in 2006 and 2007 that they didn't get until the end of 2010.
23 Appellants state that the FTB doesn't apply any of the funds it lets roll over from year to year.
24 Appellants state that the FTB did not review the NOL and that "the rules say that it is based on how
25 much was in the account in 2005 NOT what was demanded to paid in back to 2005 year in 2008."
26 Appellants state that "if the future years payment from the time paid in 2008 was only two years from
27 paying it in" then it is "clearly not the 4 or 5 years stated that they can keep it." (Appeal Letter, pp. 1-2.)

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1 Respondent's Opening Brief

2 *Statute of Limitations*

3 Respondent states that Revenue and Taxation Code (R&TC) section 19306 provides that
4 a claim for refund must be filed within four years of the due date of the return, or one year from the date
5 of the overpayment, whichever is later, or the claim cannot be allowed. Respondent states that, for the
6 2005 tax year, the four-year statute of limitations expired on April 15, 2010 (four years from the due
7 date of the return, April 15, 2006)⁴. Respondent states that it received appellants' return, which was
8 their claim for refund, on May 15, 2010, which was past the April 15, 2010 four-year statute of
9 limitations.⁵ Respondent notes that appellants may be arguing that they filed their return in March 2010.
10 Respondent states that appellants bear the burden of proof that their refund claim was timely filed and
11 requests that appellants submit whatever documentation and information they have that would establish
12 they filed their return on or before April 15, 2010. Additionally, respondent states that it did not receive
13 any payments from appellants within one year of May 15, 2010 and that appellants' 2005 tax year
14 account reflects that the most recent payments were received on March 1, 2008. (Resp. Op. Br., pp. 3-4;
15 Ex. E.)

16 Respondent states that a taxpayer may deem his claim denied and appeal to the Board if
17 respondent has not issued a Notice of Action on the refund claim within six months after the claim is
18 filed, citing R&TC section 19331. Respondent notes that appellants referred to a letter to respondent
19 dated May 2, 2012, in their appeal letter. Respondent states that its records do not reflect that it
20 received that letter. Therefore, respondent states that appellants' May 15, 2010 claim for refund was
21 time barred under both the four-year and one-year statutes of limitations. Respondent states that its
22 denial of appellants' claim for refund of the \$16,981.74 overpayment on their 2005 account was proper.
23 (Resp. Op. Br., pp. 3-4.)

24 *Filing Requirement*

25 Respondent states that R&TC section 18501 requires every individual to "make a return
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28 ⁴ We note that the due date for the filing of 2005 returns was actually April 17, 2006, because April 15, 2006, was a Saturday.

⁵ We note that the four-year statute of limitations expired on April 19, 2010, because April 17, 2010 was a Saturday.

1 to the Franchise Tax Board, stating specifically the items of the individual's income from all sources
2 and the deductions and credits allowable" if the individual has gross income or adjusted gross income
3 in excess of specified amounts. In this case, respondent states that it issued separate Demands to both
4 appellants based on information indicating appellants received income during 2005 that might require
5 each of them to file a California tax return for that tax year. Respondent states that neither appellant
6 responded to those notices, nor did either of them respond to the NPAs respondent subsequently issued.
7 (Resp. Op. Br., p. 4; Exs. A and C)

8 Respondent states that the tax liability and penalty proposed by each NPA became final
9 when each appellant failed to protest his or her respective NPA, and respondent had no basis to make
10 adjustments to either appellants' account until: either or both appellants filed separate returns
11 establishing their respective tax liabilities, they filed a joint return establishing a joint tax liability, or
12 provided information that they did not have sufficient taxable income so that neither had a filing
13 requirement. Respondent states that, as noted above, appellants did not file their 2005 California return
14 until May 15, 2010. Until that date, respondent states that each appellant had a final tax liability
15 established by their respective NPAs, and respondent's actions pursuing collection of these final
16 liabilities was proper. (Resp. Op. Br., p. 4.)

17 *No Reasonable Cause Waiver of Statutory Period or Equitable Tolling*

18 Respondent states that the law does not provide for the waiver of the statutory period
19 based on reasonable cause or extenuating circumstances. Respondent states that it can appreciate that
20 appellants claim to have received misleading information from their tax professionals, but the law is
21 clear that unfortunate circumstances will not toll the statute of limitations for filing a claim for refund or
22 allowing an untimely claim for refund. Respondent states that the law is also clear that the taxpayer's
23 ignorance concerning the statute of limitations will not excuse an untimely filed claim, and that
24 respondent does not have a responsibility to inform a taxpayer of the time period within which a refund
25 claim must be filed. Respondent states that a taxpayer's failure, for whatever reason, to file a claim for
26 refund within the statutory period prevents the taxpayer from doing so at a later date, and that this is true
27 even when, as in this case, it is later shown that the tax was not owed in the first instance, citing
28 *United States v. Dalm* (1990) 494 U.S. 596, 602. Respondent states that fixed deadlines may appear

1 harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity
2 imparted, citing *Prussner v. United States* (7th Cir. 1990) 896 F. 2d 218, 222. Furthermore, respondent
3 states that a statute of limitations promotes fairness and practicality in the administration of an income
4 tax policy, citing *Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 300. (Resp. Op. Br.,
5 pp. 4-5.)

6 *Financial Disability*

7 Respondent states that, in limited circumstances, the statute of limitations may be tolled.
8 One of these limited circumstances is when a taxpayer is “financially disabled,” i.e., when a taxpayer
9 had a physical or mental condition that led the taxpayer to be unable to manage his or her financial
10 affairs, citing R&TC section 19316. Respondent states that the condition must last for at least
11 12 months or be a terminal condition and that no one else can have legal authorization to act on behalf
12 of the financially disabled taxpayer. Respondent states that appellants indicated in their claim for
13 refund that appellant-wife suffered a “life changing accident.” Respondent attaches a copy of its Form
14 1564, “Financially Disabled - Suspension of the Statute of Limitations”. Respondent states that if
15 appellants believe either or both of them may qualify as a financially disabled taxpayer, she or he may
16 complete the form, have a physician complete the physician’s form, and submit the completed form to
17 respondent’s representative at the address indicated in the brief. Respondent states that it will then
18 review the application. (Resp. Op. Br., p. 5; Ex. I.)

19 Appellants’ Reply Brief

20 Appellants state that it was difficult to complete their returns after dealing with two
21 attorneys claiming to be CPAs and one tax preparer. Appellants state that they found a tax preparer
22 who advised them to mail, file, and send in the tax returns which she would review. Appellants state
23 that the tax preparer gave them an envelope and used the postage meter to put the stamp on the
24 envelopes and it was mailed from the tax preparer’s office. Appellants state that they were required to
25 send the documents to the court and requested copies from the court, but copies are not kept by the
26 court for longer than 6 months. Appellants attach a declaration from the tax preparer stating that she
27 mailed a copy of the 2005 return on March 6, 2010. (App. Repl. Br., pp. 1-2; attachments.)

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1 Respondent’s Reply Brief

2 Respondent contends that the documentation does not support the tax preparer’s
3 statements concerning the mailing date of appellants’ original 2005 California return to respondent.
4 Respondent states that appellants have not met their burden of proof to establish that they filed their
5 2005 return, which was their refund claim, by April 15, 2010. Respondent states that it received
6 appellants’ 2005 California return, which was their refund claim, on May 15, 2010. Respondent
7 contends that the tax preparer’s statement fails to establish that the return was sent on March 6, 2010.
8 Respondent states that it is not clear from the tax preparer’s statement that “the return” was appellants’
9 2005 California return, nor is it clear why a copy of either a federal or state return would be mailed to
10 both the Internal Revenue Service (IRS) and respondent. Respondent states that the tax preparer does
11 not identify the “state and federal offices” as the FTB and the IRS although those are the implied
12 recipients based on the context of her statement. Moreover, respondent states that neither respondent’s
13 records nor the IRS’s records show receipt of a return for the 2005 tax year until May 2010. (Resp. Op.
14 Br. pp. 1-2; Ex. J.)

15 Additionally, respondent states that appellants assert that they prepared amended returns
16 for tax years 2005 through 2008 during March and April 2010 with the tax preparer’s assistance and
17 that the tax preparer attempted to file a 2005 amended return in a “field office” during April 2010 but
18 was told to wait thirty days before sending it. Respondent states that it is not clear from this statement
19 whether the tax preparer is referring to a California return and to respondent’s field offices, or to a
20 federal return and to an IRS field office. However, respondent states that it has no record that
21 appellants filed an amended return for tax year 2005 or for tax years 2006 through 2008, the other tax
22 years for which the tax preparer states she prepared amended returns for appellants. (Resp. Op. Br. p.
23 2; Ex. K.)

24 Respondent notes that federal Account Transcripts for tax years 2005 through 2008
25 indicate that appellants filed an amended return for tax year 2005 on June 14, 2010, both an original
26 federal return and an amended return for tax year 2006 on May 15, 2010, an original return for tax year
27 2007, on July 5, 2010, and an original return for tax year 2008 on July 12, 2010. (Resp. Op. Br., p. 2;
28 Exs. L, M, & N.)

1 Appellants' Supplemental Brief

2 Appellants state that this is all meant to either wear them down or let them slip up with
3 legal dates, times and information, especially when the FTB is very aware that appellants cannot afford
4 an attorney. Appellants contend that the state appointed someone to work with them who quit at the last
5 minute without notification. Appellants state that the FTB requested a declaration that referenced dates
6 and meetings. With regard to the FTB not understanding why anything was sent to the FTB, appellants
7 state that copies of the returns put together by a tax preparer should be sent to the FTB. Appellants state
8 that the letterhead from the tax preparer declares her to be a professional tax preparer and provided a
9 declaration. (App. Supp. Br., p. 1.)

10 Appellants state again that on March 6, 2010, when they first met with their tax preparer,
11 she advised them to mail the 2005 tax return, regardless of whether it was correct. Appellants state that
12 they sent both the returns to the offices of the FTB and IRS at the same time on the same day, date
13 stamped March 6, 2010 by regular mail service. Appellants state that the tax preparer has declared in
14 written form, that she printed a label for that date and time stamped the envelope from the tax
15 preparer's postage stamp machine. Appellants state that they were given that envelope and put the
16 documents from the tax preparer in it and placed it in the outgoing mail. Appellants state that they
17 were present when it was picked up by the local postal person on March 6, 2010, while the tax preparer
18 and appellants started work on the amended returns. Appellants also state that the FTB told them over
19 the phone that their 2005 return mailed in March 2010 was incorrectly applied to their 2004 account,
20 and that the FTB would properly apply their 2005 return to their 2005 account. (App. Supp. Br., pp. 1-
21 2.)

22 Applicable Law

23 Burden of Proof

24 Respondent's determination is presumed correct and a taxpayer has the burden of
25 proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,
26 2001-SBE-001, May 31, 2001.)⁶ In the absence of uncontradicted, credible, competent, and relevant
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⁶ Board decisions are available on its website at www.boe.ca.gov.

1 evidence showing an error in the FTB's determinations, respondent's determinations will be upheld.
2 (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) The Board has held that the
3 statute of limitations must be strictly construed and a taxpayer's failure to file a claim for refund, for
4 whatever reason, within the statutory period bars respondent from refunding the overpayment.
5 Moreover, there are no general equitable exceptions to the statute of limitations. (*Appeal of Earl W.*
6 *and Patricia A. McFeaters*, 94-SBE-012, Nov. 30, 1994.)

7 Statute of Limitations

8 The general statute of limitations for filing a refund claim is set forth in R&TC section
9 19306. Under that statute, the last day to file a claim for refund is the later of:

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

13 It is settled law that “. . . the statute of limitations on claims for refund is explicit and
14 must be strictly construed, without exception.” (*Appeal of James C. and Florence Meek*, 2006-SBE-
15 001, March 28, 2006 [citing *Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978, and
16 *Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985].) Therefore, “. . . a taxpayer's
17 failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so
18 at a later date.” (*Appeal of Earl and Marion Matthiessen, supra.*) Neither ill health of a taxpayer nor
19 any other unfortunate circumstance can extend the statute of limitations for filing a claim for refund.
20 (*Appeal of Earl W. and Patricia A. McFeaters, supra.*) Federal courts have stated that fixed deadlines
21 may appear harsh because such deadlines can be missed, but the resulting occasional harshness is
22 redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States, supra*, 896 F.2d
23 218, 222-223 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469
24 U.S. 241, 249.]) Similarly, federal courts have consistently held that there is no equitable tolling of the
25 statute of limitations on refund claims. (*United States v. Brockamp* (1997) 519 U.S. 347; see also
26 *Reynoso v. United States* (9th Cir. 2012) 692 F.3d 973, 982.)

27 The fact that the claim may have been prepared prior to the expiration of the statute of
28 limitations does not, in itself, prove the timely filing of a claim for refund. (*Appeal of La Salle Hotel*

1 Co., 66-SBE-071, Nov. 23, 1966.) If there is no convincing evidence that the claim was actually
2 mailed on or before the expiration of the statute of limitations, a taxpayer's unsupported allegations do
3 not overcome the FTB's official government records indicating that the claim for refund was not timely
4 filed. (*Appeal of La Salle Hotel Co., supra; Appeal of Richard L. and Mary D. Marks, 76-SBE-057,*
5 May 4, 1976.) A return is deemed filed on the date shown on the postmark cancellation or on the date it
6 was mailed if the taxpayer provides proof satisfactory to the FTB, such as a registered or certified mail
7 receipt, that the return was timely mailed. (Gov. Code, § 11003.)

8 The Board held that the FTB has no duty to discover overpayments made by a taxpayer
9 (*Appeal of Manuel and Ofelia C. Cervantes, 74-SBE-029, Aug. 1, 1974*), nor does the FTB have a duty
10 to inform a taxpayer of the time within which a claim for refund must be filed to avoid the application
11 of the statute of limitations. (*Appeal of Earl and Marion Matthiessen, supra.*) This is true even when it
12 is later shown that the tax was not owed in the first place. (*United States v. Dalm, supra, 494 U.S.*
13 *596.*)

14 R&TC section 19316 contains the only exception to the statute of limitations under
15 California law. R&TC section 19316, subdivision (a), suspends the limitations period specified in
16 R&TC section 19306 during any period in which a taxpayer is "financially disabled." A "financially
17 disabled" taxpayer is an individual who "is unable to manage his or her financial affairs by reason of a
18 medically determinable physical or mental impairment that is either deemed to be a terminal
19 impairment or is expected to last for a continuous period of not less than 12 months." (Rev. & Tax.
20 Code, § 19316, subd. (b)(1).) A taxpayer shall not be considered financially disabled for any period
21 when his spouse or any other person is legally authorized to act on the taxpayer's behalf in financial
22 matters. (Rev. & Tax. Code, § 19316, subd. (b)(2).)

23 To demonstrate the existence of a financial disability, the taxpayer must submit a signed
24 affidavit from a physician which explains the nature and duration of the taxpayer's physical or mental
25 impairments. (*Appeal of James C. and Florence Meek, supra.*) In addition, the taxpayer must show
26 that the period of financial disability overlaps with the relevant limitations period. (*Id.*) A taxpayer
27 must submit, at a minimum, a physician's affidavit, and submission of such proof constitutes a
28 prerequisite that must be satisfied before the merits of the proof can be addressed so that a

1 determination can be made as to whether the taxpayer suffered from a financial disability. (*Appeal of*
2 *James C. and Florence Meek, supra; Estate of Rubinstein v. United States* (Fed. Cl. 2011) 96 Fed. Cl.
3 640.) A taxpayer's ability to manage his or her financial affairs during a period of claimed illness
4 demonstrates that a taxpayer is not financially disabled. (See *Haller v. Commissioner*, T.C. Memo.
5 2010-147.)

6 STAFF COMMENTS

7 Under the four-year limitations period, a valid claim for refund should have been filed
8 no later than April 15, 2010, which is four years after the due date for the original return (i.e., April 15,
9 2006). (See Rev. & Tax. Code, § 18566.) Respondent contends that appellants did not file their claim
10 for refund until May 15, 2010, which is untimely for purposes of the four-year limitations period.
11 Appellants contend that they filed their claim for refund on March 6, 2010, which would be within the
12 four-year statute of limitations which expired on April 15, 2010. Under the one-year limitations period,
13 respondent may refund any overpayments collected within one year from the date of an appellants'
14 claim for refund. No payments were applied to appellants' account during the one year prior to
15 May 15, 2010, the date that appellants filed their claim for refund, or March 6, 2010, the date appellants
16 contend that they filed their claim for refund.

17 Appellants should be prepared to present any evidence, e.g., a certified mail receipt or
18 declaration, that they mailed their return on March 6, 2010. Appellants may also want to provide
19 another declaration that explains the court action referenced in the briefing and the court's deadlines as
20 discussed in the first declaration and to clarify whether they contend that both federal and California
21 2005 returns were filed on March 6, 2010.

22 Additionally, if appellants are asserting financial disability as a basis for abatement,
23 appellants should be prepared to present evidence of a financial disability, such as a signed affidavit
24 from a physician which describes the nature, date of onset and duration of appellant-wife's physical
25 impairment, and explain how they meet the requirements of R&TC section 19316.

26 Pursuant to California Code of Regulations, title 18, section 5523.6, if the parties have
27 any additional evidence that they want the Board to consider, the parties should provide their additional

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evidence to the Board Proceedings Division at least 14 days prior to the oral hearing.⁷

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⁷ Evidence exhibits should be sent to: Khaaliq A. Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC: 80, Sacramento, California, 94279-0080.