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

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **ROBERT E. VALDEZ AND**) Case No. 819052
13 **JUDY M. VALDEZ**)
14 _____)

	Year	Claim For Refund Amounts ¹
	2007	\$1,362
	2008	\$1,858

18 Representing the Parties:
19 For Appellants: Tax Appeals Assistance Program (TAAP)²
20 For Franchise Tax Board: Joel M. Smith, Tax Counsel
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22 **QUESTION:** Whether the statute of limitations bars appellants' claims for refund.

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26 ¹ For 2007, appellants' claim for refund amount included a \$106 payment (rounded) for penalties. Respondent denied appellants a refund of \$1,256.60, which reflects appellants' claimed revised tax liability of \$2,404.00 less credits and payments of \$476.00 and \$3,184.00 (i.e., \$2,404.00 - \$476.00 - \$3,184.00). For 2008, appellants' claim for refund amount included a \$59 payment (rounded) for penalties. Respondent denied appellants a refund of \$1,799, which reflects appellants' claimed revised tax liability of \$1,386 less credits and payments of \$1,343 and \$1,842 (i.e., \$1,386 - \$1,343 - \$1,842).

28 ² Appellants filed their appeal letter. William T. McAdoo from TAAP filed appellants' reply brief and supplemental brief.

1 HEARING SUMMARY

2 Background

3 Tax Year 2007

4 Appellants filed a timely joint 2007 California Resident Income Tax Return, reporting a
5 federal adjusted gross income (AGI) of \$101,134, California adjustments of zero, a California AGI of
6 \$101,134, itemized deductions of \$12,754, a taxable income of \$88,380, and a total tax of \$3,848.

7 After listing exemption credits totaling \$188 and a California tax withheld of \$476, appellants reported
8 a tax due of \$3,184.³ (FTB opening brief (FTB OB), p. 1; Appeal Letter (AL) and exhibits attached
9 thereto.)

10 The FTB accepted appellants' 2007 return as filed. The FTB issued a Return
11 Information Notice dated May 12, 2008, which set forth, among other things (i) an underpayment and
12 monthly penalty totaling \$175.12, (ii) an estimated tax penalty of \$107.96, and (iii) interest and fees
13 totaling \$19.79. (See exhibit attached to AL.)⁴

14 For the 2007 tax year, the FTB received the following payments (see FTB OB,
15 p. 3 & Ex. G):

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Date	Type of Payment	Amount of Payment
17 April 15, 2008	Withholding ⁵	\$476.00
18 April 9, 2008	Bill payment	\$3,184.00
19 June 6, 2008	Bill payment	\$105.57

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21 On August 2, 2013, appellants filed a claim for refund for \$1,362, asserting that they
22 incorrectly included Social Security income of \$15,660 on their 2007 California return. After
23 reviewing the matter, the FTB denied appellants' claim for refund, asserting that the claim was barred

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26 ³ Appellants submitted a copy of the filed return with their appeal letter.

27 ⁴ Later, on June 24, 2008, the FTB issued a Notice of State Income Tax Due, which set forth a dishonored payment penalty
28 of \$63.78 under R&TC section 19134. (The FTB, however, later waived the dishonored payment penalty for reasonable
cause.) (App. Reply Br., Ex. 2; FTB Reply Br., p. 2.)

⁵ Withholding credits are effective as of the original due date of the return. (Rev. & Tax. Code, § 19002; *Commissioner v. Lundy* (1996) 516 U.S. 235.)

1 by the statute of limitations. In response, appellants filed this timely appeal. (FTB OB, p. 3.)

2 Tax Year 2008

3 Appellants filed a timely joint 2008 California Resident Income Tax Return, reporting a
4 federal AGI of \$97,248, California adjustments of zero, a California AGI of \$97,248, itemized
5 deductions of \$12,621, a taxable income of \$84,627, and a total tax of \$3,383. After listing exemption
6 credits totaling \$198 and a California tax withheld of \$1,343, appellants reported a tax due of \$1,842.⁶
7 (FTB OB, p. 2; AL and exhibits attached thereto.)

8 The FTB accepted appellants' 2008 return as filed. The FTB subsequently issued a
9 notice in 2009, which set forth an estimated tax penalty of \$58.71. The notice provided on appeal is not
10 dated. (See exhibit attached to AL.)

11 For the 2008 tax year, the FTB received the following payments (see FTB OB, p. 4 &
12 Ex. H):

Date	Type of Payment	Amount of Payment
April 15, 2009	Withholding	\$1,343.00
March 24, 2009	Return payment	\$1,842.00
April 14, 2009	Bill payment	\$58.71

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18 On August 2, 2013, appellants filed a claim for refund for \$1,858, asserting that they
19 incorrectly included Social Security income of \$26,672 on their 2008 California return. After
20 reviewing the matter, however, the FTB denied appellants' claim for refund, asserting that the claim
21 was barred by the statute of limitations. In response, appellants filed this timely appeal. (FTB OB,
22 p. 4.)

23 Contentions

24 Appellants' Contentions

25 Appellants argue that they are entitled to refunds of overcollected amounts, even if the
26 statute of limitations for the refund claims have expired. (AL, p. 2; App. Reply Br., pp. 1-2; App.
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28 ⁶ Appellants submitted a copy of the filed return with their appeal letter.

1 Supp. Br., p. 1.) Appellants cite FTB Technical Advice Memorandum (TAM) 2007-01 dated April 23,
2 2007,⁷ for the proposition that an overcollection occurs when the FTB collects more than the amount
3 due as a result of an FTB clerical or mechanical error. Appellants assert that the FTB made errors by
4 not properly reviewing appellants' California returns, which appellants argue caused appellants to be
5 taxed on their Social Security income and led to the issuance of the FTB's notices of balances due.
6 Appellants contend that, had their returns been properly reviewed by the FTB, appellants would have
7 not been taxed on their Social Security income, and thus, appellants would not have received the
8 notices of balances due. Based on the foregoing, appellants contend that the FTB has overcollected and
9 appellants are entitled to refunds of the overcollected amounts, even if the statute of limitations for
10 refund claims have expired. Appellants assert that none of the examples listed in Technical Advice
11 Memorandum 2007-01 are analogous to the facts at hand, where, in appellants' estimation, they were
12 given incorrect notices of balances due because of incorrect tax returns that the FTB failed to correct.
13 (AL, p. 2; App. Reply Br., pp. 1-2; App. Supp. Br., p. 1.)

14 The FTB's Contentions

15 The FTB contends it properly determined that appellants' claims for refund are barred
16 due to the running of the four-year and the one-year statute of limitations set forth in R&TC section
17 19306. Specifically, the FTB states that appellants' 2007 return was due on April 15, 2008, and four
18 years from that date was April 15, 2012. Based on the foregoing, the FTB contends that appellants'
19 2007 claim for refund, filed on August 2, 2013, is barred under the four-year statute of limitations.
20 Also, the FTB states that appellants made their last payment for the 2007 tax year on June 6, 2008, and
21 one year from that date was June 6, 2009. As such, the FTB contends that appellants' 2007 claim for
22 refund is barred under the one-year statute of limitations. Next, the FTB states that appellants' 2008
23 return was due on April 15, 2009, and four years from that date was April 15, 2013. Based on the
24 foregoing, the FTB contends that appellants' 2008 claim for refund, filed on August 2, 2013, is barred
25 under the four-year statute of limitations. Also, the FTB states that appellants made their last payment
26 for the 2008 tax year on April 15, 2009, and one year from that date was April 15, 2010. As such, the
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28 ⁷ The FTB's Technical Advice Memorandum 2007-01 may be accessed online at:
https://www.ftb.ca.gov/law/Technical_Advice_Memorandums/2007/20070001.pdf.

1 FTB contends that appellants' 2008 claim for refund is barred under the one-year statute of limitations.
2 (FTB OB, pp. 2-4.)

3 The FTB notes that the law does not provide for the waiver of the statutory periods
4 based on reasonable cause or extenuating circumstances, citing the *Appeal of Richard M. and*
5 *Claire P. Hammerman*, 72-SBE-049, decided by the Board on September 17, 1973, and *Prussner v.*
6 *United States* (7th Cir. 1990) 896 F.2d 218, 222.⁸ (FTB OB, pp. 4-5.)

7 The FTB also contends that appellants incorrectly assert that there were
8 "overcollections." The FTB states that an "overcollection" is generally due to a clerical or mechanical
9 error by the FTB. In comparison, the FTB asserts that an "overpayment" is a result of an action or
10 mistake by a party other than the FTB and, thus, does not constitute an "overcollection." The FTB
11 contends that appellants voluntarily self-assessed taxes for the 2007 and 2008 tax years and the FTB
12 was legally entitled to collect those self-assessed taxes based on appellants' 2007 and 2008 tax returns.
13 Based on the foregoing, the FTB argues that the amounts at issue were overpayments (not
14 overcollections made by the FTB) and the claims for refund were properly denied as being beyond the
15 statute of limitations. (FTB Reply Br., pp. 1-2.)

16 Applicable Law

17 Statute of Limitations

18 R&TC section 19306 provides that no credit or refund shall be allowed after four years
19 from the date the return was filed, if filed within the extended due date under R&TC section 18567,
20 four years from the original due date of the return, or one year from the date of the overpayment,
21 whichever is later, unless a claim for refund is filed before the expiration of that period. (Rev. & Tax.
22 Code, § 19306, subd. (a).)

23 The language of the statute of limitations is explicit and does not provide exceptions.
24 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) Further, the statute of limitations
25 is "strictly construed and . . . a taxpayer's failure to file a claim for refund, for whatever reason, within
26 the statutory period bars him from doing so at a later date." (*Appeal of Earl and Marion Matthiessen*,

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28 ⁸ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 85-SBE-077, July 30, 1985.) Neither ill health of a taxpayer nor any other unfortunate circumstance
2 will excuse a late filing of a claim for refund. (*Appeal of Earl W. and Patricia A. McFeaters*,
3 94-SBE-012, Nov. 30, 1994.) Federal courts have stated that fixed deadlines may appear harsh because
4 such deadlines can be missed, but the resulting occasional harshness is redeemed by the clarity
5 imparted. (*Prussner v. United States, supra* [quoting *United States v. Locke* (1985) 471 U.S. 84;
6 *United States v. Boyle* (1985) 469 U.S. 241, 249].)

7 Overcollections

8 The FTB's TAM 2007-01, *supra*, provides that "there are a very limited number of
9 situations in which amounts are 'overcollected' as opposed to overpaid, which can be returned to the
10 taxpayer after the statute of limitations has expired for claiming a refund." It also provides that "the
11 provisions for such a return of payments are very narrow and applied infrequently." It further provides
12 that [a]n 'overcollection' is characterized as an amount collected as a result of some clerical or
13 mechanical error" in excess of "the amount actually due under the law." The FTB's TAM 2007-01
14 states:

15 The basic rule utilized in distinguishing between an "overcollection" and a barred
16 overpayment is whether amounts collected were based on an assessment that was
17 accurate based on the information available to the FTB at the time the assessment was
18 made. Collection of amounts pursuant to a valid assessment will never result in an
"overcollection" situation.

19 The FTB's TAM 2007-01 provides the following example of an overpayment that is barred by the
20 statute of limitations that the FTB collected pursuant to a valid assessment:

21 FTB received income information indicating that taxpayer received \$60,005.00 in income
22 during the 2005 tax year. When the taxpayer failed to file a return, FTB issued an
23 assessment for \$3,164.00 in tax based on that income and pursued collection, completely
24 satisfying the assessment. However, after the statute of limitations has expired, the
25 taxpayer files a tax return indicating multiple deductions and credits, which was accepted
26 by the FTB and reduced the tax liability to \$2,000.00. The \$1,164.00 FTB collected over
the final liability was not an overcollection. FTB properly based the assessment on
correct information. It was the taxpayer's failure to file a timely return that resulted in
the overpayment, not a mistake by the FTB.

27 STAFF COMMENTS

28 It is appellants' responsibility to file a claim for refund within the timeframe prescribed

1 by law. (*Appeal of Earl and Marion Matthiessen, supra.*) As discussed above, pursuant to R&TC
2 section 19306, a taxpayer must file a claim for refund within four years of the last date prescribed for
3 filing the return, or within one year from the date of overpayment, whichever period expires later.
4 What follows are staff's comments regarding the four-year and one-year claims periods for each of the
5 two years on appeal.

6 **2007** – Appellants' 2007 return was due on April 15, 2008. Four years from that date was
7 April 15, 2012. Therefore, appellants' claim for refund, filed on August 2, 2013, is barred under the
8 four-year statute of limitations. Appellants made their last payment on June 6, 2008. One year from
9 that date was June 6, 2009. Therefore, appellants' claim for refund is barred under the one-year statute
10 of limitations.

11 **2008** – Appellants' 2008 return was due on April 15, 2009. Four years from that date was
12 April 15, 2013. Therefore, appellants' claim for refund, filed on August 2, 2013, is barred under the
13 four-year statute of limitations. Appellants made their last payment on April 15, 2009. One year from
14 that date was April 15, 2010. Therefore, appellants' claim for refund is barred under the one-year
15 statute of limitations.

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