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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 **TERESA BENJAMIN**<sup>1</sup> ) Case No. 487973

<u>Year</u>	<u>Claim For Refund</u>
2000	\$2,203

17 Representing the Parties:

19 For Appellant: Jeff Johnston, TAAP<sup>2</sup>  
20 For Franchise Tax Board: Marguerite Mosnier, Tax Counsel III

22 **QUESTION:** Whether appellant's claim for refund is barred by the statute of limitations.

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25 <sup>1</sup> Appellant resides in Campbell, Santa Clara Country, California. Theresa Benjamin and David Benjamin both signed the  
26 appeal letter in this matter; however, the Franchise Tax Board denied the claim for refund here with respect to Theresa  
Benjamin alone. Accordingly, only Theresa Benjamin is an appellant in this matter.

27 <sup>2</sup> Appellant submitted her own appeal letter. Appellant's subsequent submissions and representation have been made by the  
28 Tax Appeals Assistance Program (TAAP). L. Tracy MacKenzie submitted appellant's reply brief, and Noel Benton  
submitted her supplemental brief (dated March 24, 2010). The final correspondence at the time of this writing shows Jeff  
Johnston as appellant's current representative.

1 HEARING SUMMARY

2 Facts

3 Appellant did not file a timely tax return for the tax year 2000. Respondent, having  
4 received information that appellant received enough income to require a tax return filing, issued a  
5 Request for Tax Return (Request) to appellant on May 20, 2002. (Resp. Op. Br., exhibit A.) The  
6 Request directed appellant to either file a 2000 California income tax return or explain why a filing was  
7 not required, and set a reply deadline of June 19, 2002. Appellant did not reply to this letter, and  
8 respondent issued a Notice of Proposed Assessment (NPA) to appellant on August 28, 2002.<sup>3</sup> (*Id.*,  
9 exhibit B.)

10 Respondent's NPA estimated appellant's income based on \$76,570 in wages reported by  
11 Hoetron, Inc., appellant's employer in 2000, and \$39 in interest from Wells Fargo & Company reported  
12 on a Form 1099, for a total income of \$76,609. (Resp. Op. Br., exhibit B, p. 2.) The NPA used the  
13 standard deduction of \$2,811 to reach a taxable income amount of \$73,798 and a tax of \$5,109. After  
14 applying the standard exemption credit of \$75.00 and withholding credits of \$4,197.00, the NPA  
15 proposed a net tax liability of \$837.00, and imposed a late filing penalty of \$209.25. (*Id.* at p. 1.)  
16 Appellant did not protest the NPA and it became final after the expiration of the sixty day protest period,  
17 on October 28, 2002.

18 The actual date appellant filed her original California income tax return (540) for the year  
19 2000 is in dispute. Respondent contends appellant first filed a valid return for the 2000 tax year on  
20 April 15, 2008.<sup>4</sup> (Resp. Op. Br., p. 2 & fn. 3.) Appellant asserts she first filed a return for 2000 on  
21 March 1, 2004. (App. Supp. Br., p. 1; App. Supp. Info.)<sup>5</sup> Appellant's return calculated a tax liability of  
22 \$1,994 based on a taxable income amount of \$39,490. After applying withholding credits of \$4,197,  
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24 <sup>3</sup> Both the Request and the NPA were issued to appellant under the name of Teresa Hutter, her surname at the time. (Resp.  
25 Op. Br., p. 1, fns. 1 & 2.)

26 <sup>4</sup> Appellant originally agreed with this date in her reply brief, but subsequently states that a return was filed earlier. (App.  
27 Reply Br., p. 1.)

28 <sup>5</sup> Appellant filed two reply briefs. The first reply brief, filed November 18, 2009, will be referred to as appellant's reply brief.  
The second reply brief, filed March 24, 2010, will be referred to as appellant's supplemental brief. Appellant also submitted a  
signed statement on April 7, 2010, which is referred to as appellant's supplemental information.

1 appellant's return claimed an overpayment amount of \$2,203. (Resp. Op. Br., exhibit C.) Respondent  
2 accepted the calculations on the return, adjusted appellant's tax liability to \$1,994, and abated the late  
3 filing penalty. (*Id.* at exhibit D.) Respondent sent appellant a Statute of Limitations Letter (Letter) on  
4 April 3, 2009, informing appellant that her refund claim was denied because it was made after the statute  
5 of limitations. (Appeal Letter, attachments.) This timely appeal followed.

### 6 Contentions

7 Appellant contends she filed a California income tax return for 2000 on or around March  
8 1, 2004, within the statute of limitations for a refund claim.<sup>6</sup> (App. Supp. Br.) Appellant provides a  
9 signed statement from herself, dated March 24, 2010, attesting to this. (App. Supp. Info.) Regardless of  
10 when the first return was filed, the information and calculations on the returns are purportedly the same,  
11 so that it appears appellant contends she submitted the same return twice.<sup>7</sup> Appellant asserts that her  
12 common practice is to file her federal and California income tax returns and requests for extensions at  
13 the same time.<sup>8</sup> Appellant provides a signed statement from herself, dated March 22, 2010, asserting  
14 she submitted an extension request to respondent regarding her 2000 tax returns on April 16, 2001, and  
15 argues that it may have been lost by respondent.<sup>9</sup> (App. Supp. Br., p. 1 & exhibit A.) Appellant argues  
16 that respondent may have also lost her timely filed refund claim (her 540 tax return). (*Id.*) Appellant  
17 contends that since the date her original return was filed is unclear, it reasonably suggests she may have  
18 filed her amended return within the statute of limitations, and equity dictates that her refund claim be  
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20 <sup>6</sup> Prior to her supplemental brief, appellant conceded she did not file a return for 2000 until April 15, 2008. (App. Reply Br.)  
21 Up to that point, appellant asserted the Internal Revenue Service had accepted her return as a claim for refund even though it  
22 was submitted after the statute of limitations had run, and therefore respondent should as well. Appellant also claimed that  
23 familial concerns and financial difficulties prevented her from filing timely. (*Id.*; Appeal Letter.) After respondent filed its  
24 reply brief, noting that appellant filed a federal tax return on March 1, 2004, appellant has focused on the argument that she  
25 filed a state return when she filed her federal return, and therefore her claim for refund should not be barred by the statute of  
26 limitations. (App. Supp. Br.)

27 <sup>7</sup> A copy of the 540 return submitted on April 15, 2008, is provided. (Resp. Op. Br., exhibit C.) There is no record of the  
28 return allegedly filed on March 1, 2004, but appellant maintains that the refund claimed on that return is also \$2,203, as  
shown on the return filed April 15, 2008. (App. Supp. Br.)

<sup>8</sup> Appellant filed her federal tax return for 2000 on March 1, 2004, within the federal statute of limitations for filing a claim  
for refund, taking into account a federal filing extension she requested. (Resp. Reply Br., p. 1.)

<sup>9</sup> The original due date of appellant's 2000 return was April 15, 2001. It appears as though appellant filed an extension  
request for the 2000 tax year with the Internal Revenue Service on April 15, 2001. (Resp. Reply Br., exhibit E, p. 2.)

1 considered within the statute of limitations. (*Id.* at p. 2.)

2 Respondent contends appellant's claim for refund, in the form of her tax return for 2000  
3 filed April 15, 2008, is barred by the statute of limitations. Respondent does not report having any  
4 record of a valid return for appellant's 2000 tax year being filed prior to this filing date.<sup>10</sup> Respondent  
5 asserts the statute of limitations cannot be tolled based on appellant's unfortunate financial and familial  
6 situation under California law. (Resp. Op. Br., p. 4.) Respondent asserts the action of the Internal  
7 Revenue Service (IRS) in accepting her claim for refund does not allow it to accept her claim as well.  
8 (*Id.* at pp. 4-5.) Respondent notes that appellant filed a timely federal claim for refund in the form of a  
9 tax return with the IRS on March 1, 2004, but did not file a return at this time with California.  
10 Respondent contends it has no discretion to allow a claim for refund when the claim is filed after the  
11 expiration of the statute of limitations. (Resp. Reply Br., p. 2.)

#### 12 Applicable Law

13 The general statute of limitations for filing a refund claim is set forth in Revenue and  
14 Taxation Code (R&TC) section 19306. Under that section, the last day to file a claim for refund is the  
15 later of:

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

19 Withholding payments are deemed paid on the last day prescribed for filing the return pursuant to  
20 R&TC section 19002, subdivision (c)(1).

21 The language of the statute of limitations is explicit and must be strictly construed.  
22 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) The statute of limitations is  
23 “strictly construed and . . . a taxpayer’s failure to file a claim for refund, for whatever reason, within the  
24 statutory period bars him from doing so at a later date.” (*Appeal of Earl and Marion Matthiessen*, 85-  
25 SBE-077, July 30, 1985.) It is a taxpayer’s responsibility to file a claim for refund within the timeframe

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26 <sup>10</sup> Respondent notes appellant attempted to file an amended return on or about January 11, 2008, using the married filing joint  
27 status. However, appellant's husband filed an original 2000 return claiming married filing separate status, and was not  
28 allowed to file another return with a different filing status since it was more than four years beyond the original due date of  
the return. (Resp. Op. Br., p. 2, fn. 3; see Rev & Tax. Code, § 18526.) Therefore, the return was not accepted as valid. From  
the record, it appears as though the difference between the date of this attempted return and the eventually filed return on  
April 15, 2008, is insignificant in regard to the statute of limitations issue.

1 prescribed by law. (*Appeal of Earl and Marion Matthiessen, supra.*) Federal courts have stated that  
2 fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is  
3 redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896  
4 F.2d 218, 222-223; *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S.  
5 241, 249].)

6 R&TC section 19316 contains the only exception to the statute of limitations under  
7 California law. R&TC section 19316 tolls the statute of limitations during a period of “financial  
8 disability,” meaning the taxpayer was unable to manage his or her financial affairs due to a medically  
9 determinable physical or mental impairment that is expected to be a terminal impairment or is expected  
10 to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd. (b)(1).)  
11 In order to demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit  
12 from a physician that explains the nature and duration of the taxpayer’s physical or mental impairments.  
13 (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In addition, the taxpayer must  
14 show that she satisfies the strict definition of “financial disability” such that the taxpayer could not  
15 manage her financial affairs; it is not sufficient to show that the taxpayer could not engage in a regular  
16 occupation. (*Ibid.*)

17 The Board has held that the FTB has no duty to discover an overpayment made by a  
18 taxpayer (*Appeal of Manuel and Ofelia C. Cervantes*, 74-SBE-029, Aug. 1, 1974); nor does the FTB  
19 have a duty to inform a taxpayer of the time within which a claim for refund must be filed in order to  
20 avoid application of the statute of limitations. (*Appeal of Earl and Marion Matthiessen, supra.*)

#### 21 STAFF COMMENTS

22 The original due date for appellant's California tax return for the tax year 2000 was April  
23 15, 2001. Appellant's withholding payments were deemed paid on the last day prescribed for filing the  
24 return, pursuant to R&TC section 19002, subdivision (c)(1). Since appellant's refund amount appears to  
25 consist fully of withholding payments, the one year statute of limitations for a claim for refund expired  
26 on April 15, 2002. Since appellant did not file a return within any extended filing date, the four year  
27 statute of limitations expired on April 15, 2005.

28 Appellant has signed a statement asserting she filed a California tax return on or around

1 March 1, 2004, which would be within the four year statute of limitations. Appellant filed a federal  
2 return on March 1, 2004, and asserts that her habit is to file her California return when she files her  
3 federal return. Both parties should be prepared to provide and discuss any evidence to support or refute  
4 the contention that she filed a return with respondent prior to the April 15, 2008, filing. Appellant  
5 should be prepared to explain why she (purportedly) filed the same 540 tax return twice, four years  
6 apart. Should the Board find appellant filed a return with respondent prior to the expiration of the  
7 statute of limitations on April 15, 2005, but a copy of the return cannot be produced, the parties should  
8 be prepared to discuss whether the reported amounts on the April 15, 2008, return should be used.  
9 Should the Board find appellant has not shown she filed a return prior to the expiration of the four year  
10 statute of limitations, then respondent's action in denying the claim for refund must be affirmed.

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