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

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **MANIK R. BOSE AND DEVIKA BOSE¹**) Case No. 574066

	<u>Years³</u>	<u>Claims for Refund</u>
	2001	\$632
	2002	\$525

17 Representing the Parties:

18 For Appellants: Manik R. Bose

19 For Franchise Tax Board: Cynthia D. Kent, Tax Counsel III

21 **QUESTION:** Whether respondent properly determined appellants' claims for refund are barred by
22 the statute of limitations.

24 ¹ Appellants reside in Pasadena, Los Angeles County.

25 ² This matter was originally calendared for oral hearing at the Board's April 24-26, 2012 Culver City Board meeting.
26 Appellants requested a postponement and this matter was rescheduled to the Board's July 24-26, 2012 Culver City Board
27 meeting so that appellants' new representative, from the Tax Appeals Assistance Program, could prepare for the hearing.

28 ³ The tax years on appeal are more than seven years from the date the appeal was filed, because appellants filed their claims
for refund on April 15, 2009, and February 15, 2010, for 2001 and 2002, respectively, more than seven years after the tax
years at issue.

1 HEARING SUMMARY

2 Facts

3 Appellants filed a timely 2001 return, reporting taxable income of \$69,500, with a total
4 self-assessed tax liability of \$2,194. After accounting for withholding credits of \$2,708, appellants
5 claimed a refund of the \$514 overpayment (i.e., \$2,194 - \$2,708), which was refunded to appellants.
6 (Resp. Op. Br., p. 1, Exhs. A, B, & C.)

7 Appellants also filed a timely 2002 return, reporting taxable income of \$45,505, with a
8 total self-assessed tax liability of \$525. After accounting for withholding credits of \$1,273, appellants
9 claimed a refund of the \$748 overpayment (i.e., \$525 - \$1,273), which was refunded to appellants.
10 (Resp. Op. Br., p. 2, Exhs. D, E & F.)

11 Sometime thereafter, appellants became aware that they misreported their social security
12 income as taxable income on their 2001 and 2002 returns. On April 15, 2009, appellants filed an
13 amended return (Form 540X) for the 2001 tax year reporting a reduced total tax liability of \$1,562, and
14 requesting a refund of \$632 (i.e., \$1,562 - \$2,194). In addition, on February 15, 2010, appellants filed a
15 Form 540X for the 2002 tax year, reporting a reduced total tax liability of zero and requesting a refund
16 of \$525 (relating to the tax liability originally self-assessed). (Resp. Op. Br., p. 2, Exhs. G & H.)

17 Upon review, respondent revised appellants' 2001 and 2002 tax year accounts
18 accordingly. However, respondent stated it was unable to refund the overpayments due to the expiration
19 of the statute of limitations. On February 28, 2011, respondent issued a denial of appellants' claims for
20 refund of the overpayments. (Resp. Op. Br., p. 2; App. Op. Br., Attachment.) Appellants then filed this
21 timely appeal.

22 Contentions

23 Appellants

24 In a letter dated May 20, 2011, appellants contend respondent failed to notify them of the
25 overpayments for the years at issue and it was only after a period of years, appellants discovered the
26 overpayments on their own. Appellants further contend that their failure to file a claim for refund within
27 the statute of limitations was not their fault. Appellants assert that respondent had a duty to take
28 immediate steps to refund appellants' overpayments and respondent failed to do so. Appellants state

1 that they cannot afford to lose the amount at issue because they are retired and surviving on a meager
2 pension and social security allowances. Appellants argue that respondent's denial of their claims for
3 refund was utterly wrong and the failure to correct these errors would be an unconscionable act against
4 appellants who paid their federal and state taxes timely year after year. Therefore, in the interest of
5 justice and fairness, appellants request that the Board refund their overpayments. (Appeal Letter,
6 pp. 1-3.)

7 In appellants' reply brief, appellants assert that respondent failed to address the main
8 issue of "Ethics in Administration" and questions respondent's understanding of honesty. Appellants
9 assert that the failure or incompetence or mistakes on respondent's part cannot be grounds for punishing
10 appellants. Appellants question why respondent notifies taxpayers when there is an underpayment, but
11 does not notify taxpayers when there is an overpayment. Appellants further argue that respondent
12 violated its professional code of conduct in levying additional tax and interest during consecutive years,
13 but not informing appellants of their overpayments in the years at issue. Appellants contend that
14 respondent's employees tend to be lax with a "take it easy mentality". Appellants further contend that
15 respondent's employees hide behind "so-called legal counsels" to get away with doing "all kinds of
16 wrongdoing with impunity". Appellants argue the real issue is respondent's employees "bungled" their
17 returns from 2001 to 2007 in that respondent should have caught the overpayments. Appellants further
18 argue that the length of time between the returns being processed, and appellants discovering the
19 overpayments, was beyond their control. (App. Reply Br., pp. 2-8.)

20 Respondent

21 Respondent contends that appellants failed to show that a timely claim for refund was
22 filed before the close of the statute of limitations pursuant to R&TC section 19306 for the 2001 and
23 2002 tax years. Respondent contends that, for the 2001 tax year, the four-year statute of limitations
24 expired on April 15, 2006, and the one-year statute of limitations expired on April 15, 2003. For the
25 2002 tax year, respondent contends the four-year statute of limitations expired on April 15, 2007, and
26 the one-year statute of limitations expired on April 15, 2004. As appellants filed their claims for refund
27 on April 15, 2009, and February 15, 2010, for the 2001 and 2002 tax years, respectively, respondent
28 contends that appellants' claims for refund are clearly time barred. (Resp. Op. Br., p. 3.)

1 Respondent further contends it has no duty to discover overpayments and to inform
2 taxpayers of such overpayments, citing the Board's decision in the *Appeal of Manuel and Ofelia C.*
3 *Cervantes*, 74-SBE-029, decided on August 1, 1974. Respondent also asserts that the law does not
4 provide for the waiver of the statute of limitations based on reasonable cause or extenuating
5 circumstances, citing *United States v. Dalm* (1990) 494 U.S. 596. (Resp. Op. Br., p. 4.)

6 Applicable Law

7 Statute of Limitations – Refund Claim

8 The general statute of limitations for filing a refund claim is set forth in R&TC section
9 19306. Under that section, 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 overpayments.

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

15 The language of the statute of limitations is explicit and must be strictly construed.
16 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) The statute of limitations is
17 “strictly construed and . . . a taxpayer’s failure to file a claim for refund, for whatever reason, within the
18 statutory period bars him from doing so at a later date.” (*Appeal of Earl and Marion Matthiessen*,
19 85-SBE-077, July 30, 1985.) Federal courts have stated that fixed deadlines may appear harsh because
20 they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal
21 obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223; *United States v.*
22 *Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

23 R&TC section 19316 contains an exception to the statute of limitations under California
24 law. R&TC section 19316 tolls the statute of limitations during a period of “financial disability.” A
25 taxpayer is “financially disabled” if he is unable to manage his or her financial affairs due to a
26 medically-determinable physical or mental impairment that is expected to be a terminal impairment or is
27 expected to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd.
28 (b)(1).)

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1 No Duty to Inform

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

6 Doctrine of Equitable Estoppel

7 A government agency may be estopped to rely on the statute of limitations in denying a
8 claim for refund where the agency's erroneous advice has induced the claimant to delay filing until after
9 the statute of limitations period expired. (*Appeal of Jerold E. Wheat, 83-SBE-150, June 21, 1983.*)
10 However, equitable estoppel is applied against the government only in rare and unusual circumstances
11 and when its application is necessary to prevent manifest injustice. (See *Appeal of Richard R. and*
12 *Diane K. Smith, 91-SBE-005, Oct. 9, 1991.*)

13 The four elements of equitable estoppel are: (1) the government agency must be shown
14 to have been aware of the actual facts; (2) the government agency must be shown to have made an
15 incorrect or inaccurate representation to the relying party and intended that its incorrect or inaccurate
16 representation would be acted upon by the relying party or would have acted in such a way that the
17 relying party had a right to believe that the representation was so intended; (3) the relying party must be
18 shown to have been ignorant of the actual facts; and (4) the relying party must be shown to have
19 detrimentally relied upon the representations or conduct of the government agency. (*Appeal of Western*
20 *Colorprint, 78-SBE-071, Aug. 15, 1978.*) Where one of these elements is missing, there can be no
21 estoppel. (*Hersch v. Citizens Savings & Loan Assn. (1983) 146 Cal.App.3d 1002, 1011.*) The burden of
22 proving estoppel is on the party asserting estoppel. (*Appeal of Priscilla L. Campbell, 79-SBE-035, Feb.*
23 *8, 1979.*)

24 STAFF COMMENTS

25 The original due date for appellants' California 2001 tax return was April 15, 2002.
26 Appellants' withholding payments were deemed paid on the last day prescribed for filing the return (i.e.,
27 April 15, 2002), pursuant to R&TC section 19002, subdivision (c)(1). As appellants' refund amount
28 appears to consist fully of withholding payments, the one-year statute of limitations for a claim for

1 refund expired on April 15, 2003. Since appellants did not file a refund claim within any extended filing
2 date, the four-year statute of limitations expired on April 15, 2006.

3 The original due date for appellants' California 2002 tax return was April 15, 2003.
4 Appellants' withholding payments were deemed paid on the last day prescribed for filing the return (i.e.,
5 April 15, 2003), pursuant to R&TC section 19002, subdivision (c)(1). As appellants' refund amount
6 appears to consist fully of withholding payments, the one-year statute of limitations for a claim for
7 refund expired on April 15, 2004. Since appellants did not file a refund claim within any extended filing
8 date, the four-year statute of limitations expired on April 15, 2007.

9 As appellants filed their claims for refund for 2001 and 2002 on April 15, 2009, and
10 February 15, 2010, respectively, the statute of limitations apparently expired for the tax years at issue.
11 Appellants appear to contend that the statute of limitations should be waived in this case because
12 respondent failed to inform appellants of the overpayments and, therefore, the untimeliness of the claim
13 for refund was beyond appellants' control. It appears to Board staff that appellants' contention is
14 unpersuasive as respondent has no duty to identify such overpayments and to inform taxpayers of such
15 overpayments.

16 In addition, it appears to staff that appellants have not yet established "financial
17 disability" under R&TC section 19316 to toll the statute of limitations. It appears to staff that appellants
18 have not provided any evidence to show that they were unable to manage their financial affairs due to a
19 medically-determinable physical or mental impairment that was expected to be a terminal impairment or
20 was expected to last for a continuous period of not less than 12 months. Appellants also appear to be
21 asserting estoppel-like arguments. At the hearing, appellants may wish to address whether they have
22 met the requirements for equitable estoppel.

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