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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 **SHIRLEY J. CARTER**¹) Case No. 518429

	<u>Year</u> ²	<u>Claim For Refund</u>
	1996	\$10,975.32

17 Representing the Parties:

19 For Appellant: Jason Peart, TAAP³
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.

24 ¹ Appellant resides in Compton, Los Angeles County.

25 ² The tax year on appeal is more than ten years from the date the appeal was filed because appellant filed her original return,
26 which respondent considered a claim for refund, during May 2008, more than ten years after the tax year at issue.

27 ³ Appellant submitted her own appeal letter. Appellant's subsequent submissions and representation have been made by the
28 Tax Appeals Assistance Program (TAAP). Peter Kwok submitted appellant's opening brief dated March 16, 2010 and the subsequent briefs were written by Jason Peart; at the time of this writing, the correspondence shows Jason Peart as appellant's current representative.

1 HEARING SUMMARY

2 Facts

3 Appellant did not file a timely 1996 return and the Franchise Tax Board (FTB or
4 respondent) subsequently issued a Notice of Proposed Assessment (NPA) on October 9, 1998, for a tax
5 liability due of \$5,202.00, a late filing penalty and a notice and demand penalty of \$1,300.50 each, and a
6 filing enforcement fee of \$71.00, plus applicable interest. Appellant did not protest the NPA, and the
7 proposed assessment became final after the 60-day protest period expired. Respondent undertook
8 collection action, and received payments between July 15, 2003 and September 15, 2008. (Respondent's
9 Opening Brief (Resp. Open. Br.), Ex. A.)

10 Appellant filed her 1996 California tax return on or about May 5, 2008.⁴ Appellant's
11 return stated total income of \$0, tax liability of \$0, and indicated \$0 in total tax payments. (Resp. Open.
12 Br., Ex. B.) Respondent treated the return as a claim for refund because appellant had payments on her
13 account. Respondent processed and accepted appellant's return as filed. Based on the information
14 reported on appellant's tax return, respondent adjusted appellant's tax liability to \$0, abated the late filing
15 and notice and demand penalties, and abated the filing enforcement fee of \$71, but imposed a county
16 lien fee of \$13 and a collection cost fee of \$101. After making these adjustments and crediting
17 appellant's 1996 account with the payments received, appellant had a credit balance of \$12,223.35
18 remaining in her 1996 account. (Resp. Open. Br., Ex. A.)

19 Because appellant filed her 1996 return more than four years after the original due date of
20 the return, respondent determined that it was untimely for a refund of the full amount paid and
21 respondent refunded only those payments that were made within a year before the return was filed. For
22 that reason, respondent refunded \$1,134.03 (\$1,116.60 tax plus \$17.43 interest) to appellant on
23 September 26, 2008, leaving a credit balance of \$10,975.32. (Resp. Open. Br., Ex. C.) Respondent did
24 not issue a formal notice of claim denial to appellant. This appeal then followed.

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28 ⁴ Respondent contends the filing date was May 7, 2008. However, appellant provided a copy of a certified mail receipt dated
May 5, 2008, indicating that her 1996 return was filed on May 5, 2008.

1 Contentions

2 Appellant

3 In appellant's opening brief dated March 16, 2010, appellant contends she sent the FTB a
4 claim for refund on or about August 20, 2009 for the credit balance on her 1996 account in the amount
5 of \$10,975.32. In the letter dated August 20, 2009, appellant stated that she called respondent's office
6 many times to discuss why respondent continued taking money from her and requested respondent to
7 stop. (Appellant's Opening Brief (App. Open. Br.), Attachment Claim for Refund.) Appellant
8 acknowledges that in 2008 after appellant sent a letter to the FTB, the wage garnishment stopped and
9 she received a partial payment of \$1,100.⁵ After many calls to the FTB, appellant was told the
10 remaining amount of money could not be returned because the statute of limitations expired. Appellant
11 states that she mailed the first letter on August 20, 2009, to the "Claim for Refund Department" at the
12 FTB. Appellant further states that she called the FTB four weeks later and she was instructed by an
13 employee of the FTB to send a letter to the Board of Equalization (Board). (App. Open. Br., Attachment
14 Denial of Claim for Refund.) As such, appellant asserts in the opening brief dated March 16, 2010 that
15 more than six months have passed since appellant filed the claim for refund and the FTB has failed to
16 act. Accordingly, appellant asserts the Board has jurisdiction over this appeal. (App. Open. Br., p. 1.)

17 With respect to the timeliness of the claim for refund, appellant asserts that once
18 respondent started garnishing her wages in 2003, she made repeated phone calls to the FTB protesting
19 this collection and claiming a refund of all amounts collected. Appellant contends that respondent did
20 not sufficiently explain the nature of the erroneous collection and did not explain that appellant must
21 request a refund in writing. Appellant states she filed her 1996 tax return in 2008 after respondent
22 clarified the error to her. Appellant contends that no return was filed prior to this date because
23 appellant's adjusted gross income did not prompt a filing requirement. Appellant contends respondent
24 should make a full refund of payments that it erroneously collected for the 1996 tax year despite the
25 untimely nature of her written claim for refund. Appellant contends this is fair in light of appellant's
26 zero tax liability for the 1996 tax year. (App. Reply Br. dated Sept. 24, 2010, p. 2.)

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28 ⁵ In another document titled Denial of Claim for Refund attached to Appellant's Opening Brief, appellant states that she received a partial payment of \$1,300.

1 Addressing respondent's contention that the Board's decision in *Appeal of Western*
2 *Colorprint* (78-SBE-071), decided August 15, 1978,⁶ precludes consideration of appellant's unwritten
3 claims for refund, appellant contends this comparison is inappropriate. Appellant asserts her phone calls
4 to respondent all focused on what was needed for the immediate return of amounts erroneously
5 garnished from her by respondent. She asserts that she made a written request for refund after
6 respondent made it clear that a written request was necessary. For that reason, she contends that it is
7 patently unfair under these circumstances that she is entitled to only a partial refund due to the statute of
8 limitations running on the remaining amounts. She contends respondent's mistake has cost her
9 \$10,975.32 and she should not have to pay for respondent's mistake just because her initial requests
10 were not written. (App. Reply Br. dated Feb. 2, 2011, p. 1.)

11 Respondent

12 Respondent contends appellant's claim for refund, in the form of her 1996 tax return filed
13 during May 2008, is barred by the statute of limitations pursuant to Revenue and Taxation Code
14 (R&TC) section 19306. Respondent contends a taxpayer cannot receive a refund of payments made to a
15 tax year until the taxpayer establishes her tax liability is less than the total payments credited to her
16 account for that tax year. Respondent asserts appellant must file a tax return to establish her tax liability
17 for the year. Additionally, respondent contends that a taxpayer must file a refund claim within the
18 statute of limitations to have an overpayment refunded or credited to another tax year. Respondent
19 states that the original due date for appellant's 1996 return was April 15, 1997 and, therefore, the four
20 year statute of limitations expired on April 15, 2001. As appellant's claim for refund was made on or
21 about May 5, 2008, the claim for refund was untimely. Respondent also contends appellant did not file
22 her return by the extension due date of October 15, 1997 and thus, she did not have an extension to file
23 her return. Respondent states it already refunded payments made within one year of the date of
24 appellant's claim for refund and asserts there is no legal authority to support granting the claim for the
25 remaining credit balance. Moreover, respondent contends appellant filed this appeal to the Board more
26 than six months after she filed her 1996 return. (Resp. Open. Br., pp. 1-3.)

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28 ⁶ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 In respondent's reply brief dated November 29, 2010, respondent addresses appellant's
2 contentions that she called respondent in 2003 requesting a refund when respondent undertook
3 collection activities on appellant's account. Respondent contends appellant's first valid claim for refund
4 was her 1996 California return filed in May 2008. Respondent asserts that it was not until that date, that
5 appellant established she overpaid her tax. Accordingly, respondent asserts its assessment, which was
6 based on appellant's federal 1996 return was valid, enforceable and collectible. Respondent states that
7 R&TC section 19322 requires a claim for refund to be in writing and state specifically the grounds for
8 the claim to be considered a valid claim for refund. Respondent cites *Shiseido Cosmetics (America) Ltd.*
9 *v. Franchise Tax Board* (1991) 235 Cal.App.3d 478 for the proposition that a claim for refund is not
10 valid if it is not in writing and does not state specifically the grounds for the claim for refund. (Resp.
11 Reply Br., p. 1.)

12 With respect to appellant's assertion that respondent was legally obligated to advise
13 appellant of the requirements for filing a valid claim for refund, respondent notes that this argument is in
14 the nature of an estoppel argument. Citing the Board's decision in *Appeal of Raymond E. and Joy*
15 *Lecompte* (89-SBE-025), decided on September 26, 1989, respondent contends that appellant's tax
16 liability must be based upon the law as set forth in the R&TC, and not upon the oral statements of
17 respondent's employees. Respondent asserts reliance on informal opinions offered by an employee of
18 respondent is not sufficient to create estoppel against respondent because without written verification of
19 an oral conversation, it cannot be established what was stated by the taxpayer to the employee and what
20 the employee stated in return. Respondent cites *Appeal of Western Colorprint, supra*, for the
21 proposition that as the subject of the conversation between appellant and respondent's employee is
22 unknown, appellant has failed to prove either that the respondent was fully apprised of all the facts or
23 that appellant was given incorrect or misleading advice. Respondent further contends that it has no legal
24 obligation to notify a taxpayer of the time within which a claim for refund must be filed. (Resp. Reply
25 Br., p. 2.)

26 Applicable Law

27 Burden of Proof

28 Respondent's determination is presumed correct and it is the taxpayer's burden to prove

1 entitlement to the refund. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)
2 Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and*
3 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

4 Jurisdictional Authority of the Board

5 R&TC section 19331 provides that if respondent fails to mail a notice of action on any
6 refund claim within six months after the claim is filed, the taxpayer may, prior to mailing of notice of
7 action on the refund claim, consider the claim disallowed and appeal to the Board. In addition,
8 California Code of Regulations, title 18, section 5412, subdivision (a)(4), provides that the Board has
9 jurisdiction to hear and decide a timely filed appeal where the FTB fails to act on a claim for a refund of
10 tax, penalties, fees, or interest, within six months after the claim is perfected with the FTB.

11 Statute of Limitations – Refund Claim

12 The general statute of limitations for filing a refund claim is set forth in R&TC section
13 19306. Under that section, the last day to file a claim for refund is the later of:

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

17 R&TC section 19316 contains the only exception to the statute of limitations under
18 California law. R&TC section 19316 tolls the statute of limitations during a period of “financial
19 disability,” meaning the taxpayer was unable to manage his or her financial affairs due to a medically
20 determinable physical or mental impairment that is expected to be a terminal impairment or is expected
21 to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd. (b)(1).)

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

1 The fact that the claim may have been prepared prior to the expiration of the statute of
2 limitations does not, in itself, prove the timely filing of a claim for refund/credit. (*Appeal of La Salle*
3 *Hotel Co.*, 66-SBE-071, Nov. 23, 1966.) If there is no convincing evidence the claim was mailed on or
4 before the expiration of the statute of limitations, a taxpayer's unsupported allegations do not overcome
5 FTB's official government records indicating that the claim for refund/credit was not timely filed.
6 (*Appeal of La Salle Hotel Co.*, *supra*; *Appeal of Richard L. and Mary D. Marks*, 76-SBE-057, May 4,
7 1976.)

8 In *Appeal of Lyric Y. Robinson* (84-SBE-009), decided on January 17, 1984, the taxpayer
9 had his wages garnished for a deficiency that the FTB later conceded was previously satisfied.
10 However, the taxpayer did not file his claim for refund until after the four year statute of limitations
11 expired and the one year statute of limitations did not apply to the dates of the wage garnishment.
12 Accordingly, the Board held that the statute of limitations barred the taxpayer's claim for refund for
13 those amounts.

14 Claim for Refund – In Writing

15 R&TC section 19322 requires that every claim for refund be in writing, signed by the
16 taxpayer or the taxpayer's authorized representative, and state the specific grounds upon which it is
17 based and provide sufficient facts to apprise the FTB of the exact basis. (Cal. Code Regs., Title 18,
18 § 19322). A document that does not meet these requirements is not a valid claim. (*Shiseido Cosmetics*
19 *(America) Ltd. v. Franchise Tax Board*, *supra*.)

20 No Duty to Inform

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

25 Doctrine of Equitable Estoppel

26 Equitable estoppel is applied against the government only in rare and unusual
27 circumstances and when its application is necessary to prevent manifest injustice. (See *Appeal of*
28 *Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991.) The four elements of equitable estoppel

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

11 Reliance on informal opinions offered by an employee of respondent is not sufficient to
12 create estoppel against respondent. (*Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, May 4, 1976;
13 *Appeal of Patricia M. Blitzler*, 76-SBE-034, Apr. 5, 1976; *Appeal of Mary M. Goforth*, 80-SBE-158,
14 Dec. 9, 1980.) This is because the subject of the conversation between appellant and respondent's
15 employee is unknown, and does not show that respondent was fully apprised of all the facts or that
16 appellant was given incorrect or misleading advice. (*Appeal of Western Colorprint, supra.*)

17 STAFF COMMENTS

18 Pursuant to R&TC section 19331, this Board has jurisdiction over this appeal if as of the
19 date appellant filed her appeal more than six months had passed since appellant filed her claim for
20 refund during which the FTB failed to take action on the claim. In that event, the claim is deemed to be
21 denied and appellant has a right to appeal the denial to this Board. Here, respondent acknowledges that
22 the 1996 return filed on or about May 5, 2008, constituted a claim for refund and respondent issued a
23 partial refund of the amount collected within one year of the filed return. However, respondent did not
24 issue a formal denial of the remaining amount of the refund claimed and, thus, that portion of the refund
25 was deemed denied six months later on or about November 5, 2009. Therefore, appellant's appeal letter
26 dated December 10, 2009 was timely and the Board has jurisdiction.

27 With respect to the timeliness of the claim for refund, the original due date for appellant's
28 California tax return for the 1996 tax year was April 15, 1997. Accordingly, pursuant to R&TC section

1 19306, the four year statute of limitations for filing a claim for refund expired on April 15, 2001, well
2 before appellant filed her return on or about May 5, 2008. In addition, it appears that respondent
3 refunded the amounts collected and applied toward 1996 account within one year of the date of the filing
4 of the 1996 return.

5 The basis of appellant's claim that she is entitled to a full refund is her assertion that her
6 alleged telephone calls to respondent beginning in 2003 should be considered valid requests for refund
7 of the wage garnishments because she was misled by respondent's representatives who failed to inform
8 her that a claim for refund must be in writing. Appellant should be prepared to discuss whether there is
9 any case law or statute that supports her contention that the FTB had a duty to inform a taxpayer of the
10 correct process to file a claim for refund. In addition, appellant should be prepared to discuss how she
11 meets the four elements of equitable estoppel and provide evidence of her alleged conversations with
12 respondent's employees.

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