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10 **BOARD OF EQUALIZATION**
 11 **STATE OF CALIFORNIA**

12 In the Matter of the Appeal of:) **HEARING SUMMARY**
 13)
 14) **PERSONAL INCOME TAX APPEAL**
 15)
 16 **ROBERT A. KIDWELL**¹) Case No. 530913
 17)

<u>Years</u>	<u>Claims For Refund Amounts</u> ²
1998	\$6,600.94
2001	\$2,217.71
2002	\$1,616.31
2003	\$1,373.16

18 Representing the Parties:

19 For Appellant: Robert A. Kidwell
 20 For Franchise Tax Board: Kenneth A. Davis, Tax Counsel III

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 23 ¹ Appellant resides in Orange County, California. This appeal was originally scheduled for the March 22, 2011 Board
 24 meeting on the oral hearing calendar. At appellant's request, this matter was rescheduled for the June 21-24, 2011 Board
 25 meeting on the oral hearing calendar. Appellant subsequently contacted the Board Proceedings Division and requested this
 26 matter be postponed to the October 25 - 28, 2011 Culver City Board meeting on the oral hearing calendar due to scheduling
 27 conflict.

28 ² These amounts represent tax, penalties and interest collected for each year. Further information is provided in the
 "Background" section of this hearing summary, with additional detail available in the Franchise Tax Board's (respondent or
 FTB) additional information dated June 7, 2011. The first two pages of appellant's tax returns for 1998, 2002 and 2003 are
 included with respondent's opening brief as Exhibits E, Q and W, and respondent states that it does not have a copy of
 appellant's 2001 tax return in its records.

1 QUESTION: Whether the statute of limitations bars appellant's claims for refund.

2 HEARING SUMMARY

3 Background

4 Appellant did not file timely California personal income tax returns for 1998 and
5 2001-2003. For each of those years, the FTB sent a notice and demand (demand) letter to appellant's last
6 known address. Those letters were not returned by the postal service as undelivered. When appellant did
7 not respond to the demand letters, the FTB issued a Notice of Proposed Assessment (NPA) for each
8 respective tax year. The NPAs proposed the following estimated amounts for each respective year:

9 1998—The FTB states that it received information showing that appellant received
10 income of \$51,756 from the following sources: \$45,739 from The Greenskeeper, \$6,000 from
11 Northbrook Life Insurance, and \$17 from AT&T. Corp.

12 2001—The FTB obtained information (reported on a federal Form 1098) that appellant
13 made mortgage interest payments to the "CA Housing Finance Agency." The FTB states that it
14 estimated appellant's income to be \$41,424 by multiplying the amount of mortgage interest by four (i.e.,
15 apparently \$10,356 x 4=\$41,424). This calculation is the industry standard, which represents the
16 minimum amount of income an individual would need to qualify for the mortgage.

17 2002— The FTB obtained information (reported on a federal Form 1098) that appellant
18 made mortgage interest payments to the "CA Housing Finance Agency." The FTB states that it
19 estimated appellant's income to be \$37,352 by multiplying the amount of mortgage interest by four (i.e.,
20 apparently \$9,338 x 4=\$37,352).

21 2003— The FTB obtained information (reported on a federal Form 1098) that appellant
22 made mortgage interest payments to the "CA Housing Finance Agency." The FTB states that it
23 estimated appellant's income to be \$36,424 by multiplying the amount of mortgage interest by four (i.e.,
24 apparently \$9,106 x 4=\$36,424).

25 Each NPA also proposed a late filing penalty, a demand penalty, a filing enforcement fee,
26 and accrued interest. Appellant did not protest the NPAs, and thus, the assessments became final. The
27 FTB pursued collection action for each year. On September 4, 2009, the FTB received appellant's 1998
28 California income tax return, and on September 14, 2009, the FTB received appellant's 2001-2003

1 California income tax returns. The FTB treated the returns as claims for refund, but the FTB denied the
2 claims because each claim was filed beyond the applicable statute of limitations. In response, appellant
3 filed this timely appeal. The specific details are set forth in the table below.

Year	Total Amount Collected	Period of Collection		Tax Liability as Reported by Appellant and Accepted by FTB	Amount Refunded
		First Payment	Last Payment		
1998	\$6,616.34	4/2/2007	1/3/2008	\$1.00	\$0
2001	\$2,217.71	12/1/2006	4/2/2007	\$0.00	\$0
2002	\$1,626.31	9/15/2006	12/1/2006	\$0.00	\$0
2003	\$1,383.16	7/15/2006	9/15/2006	\$0.00	\$0

11 Contentions

12 Appellant's Contentions

13 Appellant argues that the FTB collected several thousand dollars based in part on “faulty
14 information” that appellant was making mortgage payments on a home in which he had no ownership
15 interest. Appellant states that he purchased the home several years earlier with his brother but
16 subsequently released his – appellant’s - ownership interest without removing his name from the title.
17 Appellant further states that “[d]uring the year in question, I was self employed, living rent free in a
18 home the family owned in San Diego. I made under \$15,000 for the year and have since filed an accurate
19 tax return.”

20 Appellant contends that he was never informed of the statute of limitations for filing a
21 claim for refund and that he assumed that out of fairness the excessive money taken from him would be
22 returned.

23 FTB's Contentions

24 The FTB contends that (i) appellant’s claims for refund are barred by the four-year and the
25 one-year statute of limitations (ii) the FTB had no legal duty to inform appellant of the statute of
26 limitations or to discover appellant’s overpayment or to notify appellant of any overpayment, and (iii)
27 there is no “reasonable cause” exception to the statute of limitations.

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1 Applicable Law

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

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

8 The language of the statute of limitations is explicit and must be strictly construed.
9 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.)³ The statute of limitations is
10 “strictly construed and . . . a taxpayer’s failure to file a claim for refund, for whatever reason, within the
11 statutory period bars him from doing so at a later date.” (*Appeal of Earl and Marion Matthiessen*,
12 85-SBE-077, July 30, 1985.) It is a taxpayer’s responsibility to file a claim for refund within the
13 time-frame prescribed by law. (*Ibid.*) Federal courts have stated that fixed deadlines may appear harsh
14 because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal
15 obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *United*
16 *States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

17 R&TC section 19316 contains an exception to the statute of limitations under California
18 law. R&TC section 19316 tolls the statute of limitations during a period of “financial disability,”
19 meaning the taxpayer was unable to manage his or her financial affairs due to a medically determinable
20 physical or mental impairment that is expected to be a terminal impairment or is expected to last for a
21 continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd. (b)(1).) However,
22 R&TC section 19316 does not apply to any claim for refund that is otherwise barred as of the effective
23 date of the legislation. (Rev. & Tax. Code, § 19316, subd. (c).) The effective date of the legislation was
24 September 23, 2002.

25 In order to demonstrate the existence of a financial disability, a taxpayer must submit a
26 signed affidavit from a physician that explains the nature and duration of the taxpayer’s physical or
27 mental impairments. (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In

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³ Board of Equalization cases are generally available for viewing on the Board’s website (www.boe.ca.gov).

1 addition, the taxpayer must show that he or she satisfies the strict definition of “financial disability” such
2 that the taxpayer could not manage his or her financial affairs; it is not sufficient to show that the
3 taxpayer could not engage in a regular occupation. (*Id.*)

4 The FTB’s determination of tax is presumed to be correct, and a taxpayer has the burden
5 of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,
6 2001-SBE-001, May 31, 2001.)

7 STAFF COMMENTS

8 Pursuant to California Code of Regulations, title 18, section 5523.6, the parties should
9 provide any additional evidence to Board Proceedings at least 14 days prior to the oral hearing.⁴

10 What follows is a discussion of the four-year and one-year limitations periods for each of
11 the six years on appeal.

12 **1998** – Appellant’s 1998 return was due on April 15, 1999. Four years from that date was
13 April 15, 2003. Therefore, appellant’s claim for refund (the 1998 return), filed on September 4, 2009, is
14 barred as untimely under the four-year statute of limitations. Appellant’s last payment was made on
15 January 3, 2008. One year from that date was January 3, 2009. Therefore, appellant’s claim for refund is
16 barred as untimely under the one-year statute of limitations.

17 **2001** – Appellant’s 2001 return was due on April 15, 2002. Four years from that date was
18 April 15, 2006. Therefore, appellant’s claim for refund (the 2001 return), filed on September 14, 2009, is
19 barred as untimely under the four-year statute of limitations. Appellant’s last payment was made on
20 April 2, 2007. One year from that date was April 2, 2008. Therefore, appellant’s claim for refund is
21 barred as untimely under the one-year statute of limitations.

22 **2002** – Appellant’s 2002 return was due on April 15, 2003. Four years from that date was
23 April 15, 2007. Therefore, appellant’s claim for refund (the 2002 return), filed on September 14, 2009, is
24 barred as untimely under the four-year statute of limitations. Appellant’s last payment was made on
25 December 1, 2006. One year from that date was December 1, 2007. Therefore, appellant’s claim for
26 refund is barred as untimely under the one-year statute of limitations.

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⁴ Evidence exhibits should be sent to: Claudia Madrigal, Appeals Analyst, Board Proceedings Division, State Board of
Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.

1 **2003** – Appellant’s 2003 return was due on April 15, 2004. Four years from that date was
2 April 15, 2008. Therefore, appellant’s claim for refund (the 2003 return), filed on September 14, 2009, is
3 barred as untimely under the four-year statute of limitations. Appellant’s last payment was made on
4 September 15, 2006. One year from that date was September 15, 2007. Therefore, appellant’s claim for
5 refund is barred as untimely under the one-year statute of limitations.

6 The Appeals Division notes that appellant did not argue (and has provided no evidence
7 showing) that the statute of limitations should be tolled due to a “financial disability,” such that appellant
8 could not manage his financial affairs. However, if appellant believes that he was financially disabled
9 within the meaning of R&TC section 19316 so as to toll the statute of limitation, he should be prepared to
10 present evidence to support that position.

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