

1 Mai C. Tran  
2 Tax Counsel  
3 Board of Equalization, Appeals Division  
4 450 N Street, MIC: 85  
5 PO Box 942879  
6 Sacramento CA 95814  
7 Tel: (916) 324-8244  
8 Fax: (916) 324-2618

6 Attorney for the Appeals Division

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

10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **CHARLES E. KOHLHASE, JR.**<sup>1</sup> ) Case No. 547973

	<u>Years</u> <sup>2</sup>	<u>Claims for Refund</u>
	2000	\$ 1,181
	2001	\$ 1,355
	2002	\$ 1,559 <sup>3</sup>

18 Representing the Parties:

20 For Appellant: Charles E. Kohlhase, Jr.  
21 For Franchise Tax Board: Nathan Hodges, Graduate Legal Assistant

23 **QUESTION:** Whether respondent properly determined appellant's claims for refund are barred by

25 <sup>1</sup> Appellant resides in Pasadena, Los Angeles County, California..

26 <sup>2</sup> The tax years on appeal are more than five years from the date the appeal was filed because appellant filed his claims for  
27 refund on August 25, 2008, more than five years after the tax years at issue.

28 <sup>3</sup> While respondent's records indicate appellant has a credit of \$1,559 on his 2002 tax year account, appellant contends he is due a refund of \$1,719. (Appeal Letter.)

1 the statute of limitations.

2 HEARING SUMMARY

3 Facts

4 Appellant filed timely returns for the 2000, 2001, and 2002 tax years, indicating no  
5 refunds were due on any of the tax years. (Respondent's Opening Brief (Resp. Op. Br.), Ex. A.)  
6 Respondent Franchise Tax Board (FTB or respondent) accepted appellant's returns as filed. (*Id.*)  
7 Appellant subsequently submitted a letter to respondent's Amended Returns Department on June 17,  
8 2008, claiming that appellant overpaid taxes and was due a refund for the 2000 through 2002 tax years,  
9 and filed his amended returns (Form 540X) for tax years at issue on August 25, 2008.<sup>4</sup> (Appeal Letter,  
10 Attachment 5.) Appellant stated he received and followed incorrect advice from an FTB employee  
11 about whether adjustments should be made for social security payments on appellant's California  
12 income tax returns. (*Id.*) Appellant claims that based on the advice he received, he did not make  
13 adjustments for his social security benefits which resulted in an overpayment of tax. (*Id.*) Appellant  
14 states that he did not discover this error until 2007, and upon discovery, appellant submitted his  
15 amended returns and letter stating why the statute of limitations should not apply. (*Id.*)

16 Respondent denied appellant's claims for refund on July 28, 2010, stating that although  
17 appellant's account shows a credit for each of these years, appellant's claims for refund were barred by  
18 the statute of limitations. (Appeal Letter, Attachments 1-3.) This timely appeal then followed.

19 Contentions

20 Appellant

21 Appellant contends that the statute of limitations should not apply to his situation because  
22 the corrections on his amended returns were straightforward and non-controversial, an FTB employee  
23 failed to provide the correct information about the treatment of social security benefits, appellant is a  
24 local taxpayer for over 50 years, appellant will not submit any other claims for refund for tax years prior  
25 to the 2000 tax year, and appellant will be fully retired in the near future and could use those refunds.  
26 (Appeal Letter, Attachment 5.)

27 \_\_\_\_\_  
28 <sup>4</sup> While appellant's letter indicated that the amended returns for the 2000 through 2002 tax years were attached, respondent's records show that the amended returns for these years were not filed until August 25, 2008.

1 Appellant states he turned 62 on August 15, 1997, and began collecting early social  
2 security payments. Prior to filing his 1997 California return (Form 540) in April 1998, appellant  
3 contends he called the FTB regarding the treatment of the social security payments and was told by an  
4 employee that social security benefits were still income and should be reported with no adjustments.  
5 Appellant asserts he relied on that advice in making no adjustments for his social security payments on  
6 his returns for the 1997 through 2006 tax years. In early 2008, appellant discovered he was not required  
7 to pay California income tax on federal social security payments. Accordingly, appellant made this  
8 adjustment on his 2007 return and submitted amended returns for tax years 2003 through 2006.  
9 Appellant states that he was refunded the overpaid taxes for these years. On June 17, 2008, appellant  
10 then submitted his statement explaining why the statute of limitations should not apply for the tax years  
11 2000 through 2002. Appellant asserts it took the FTB over two years to reply to his June 17, 2008 letter.  
12 (Appeal Letter.)

13 In appellant's reply brief dated December 20, 2010, appellant maintains he received  
14 "incorrect information from an FTB agent" in April 1998 which caused him to overpay his taxes for the  
15 1997 to 2006 tax years. He asserts he discovered he overpaid his taxes in March 2008 and submitted  
16 amended returns for the 2003 to 2006 tax years and received refunds for those four years. In June 2008,  
17 appellant asserts he carefully read the instructions for the Form 540X and determined that the four-year  
18 statute of limitations "was not absolute" and that the instructions invited a taxpayer to submit a  
19 statement for why the FTB should go back earlier than the statute of limitations in a taxpayer's  
20 particular case. Appellant states that the instructions for the Form 540X did not provide any information  
21 for what types of statements would, or would not, be acceptable. Appellant believed that as his reasons  
22 already had been approved for the 2003 to 2006 tax years, there was no basis for the FTB to disallow the  
23 refunds totaling \$4,255 for appellant's earlier overpayments. Appellant also asserts that it took more  
24 than two years for the FTB to respond to appellant's claim for refund. Appellant further questions the  
25 FTB's denial of his appeal when "the FTB admits that [his] arguments qualify as reasonable cause."  
26 Appellant contends if the FTB's interpretation of reasonable cause only applies to extreme medical or  
27 financial hardship, then "the FTB owes it to the taxpayer to set forth these conditions in the instructions  
28 for completing form 540X." (Appellant's Reply Brief, Attachment.)

1                   Respondent

2                   Respondent asserts that appellant's claims for refund are barred by the statute of  
3 limitations and the law does not allow waiver of the statute of limitations based on reasonable cause.  
4 Citing the Board's decision in *Appeal of Richard M. and Claire P. Hammerman*, 83-SBE-260, decided  
5 on December 13, 1983,<sup>5</sup> respondent contends appellant's failure to file a claim for refund within the  
6 statute of limitations prevents him from doing so at a later date.<sup>6</sup> Respondent further contends appellant  
7 may not receive a refund until appellant establishes his tax liability is less than the total payments  
8 credited to his account for that tax year. As appellant filed his amended 2000 through 2002 returns on  
9 August 25, 2008, respondent contends these amended returns are treated as claims for refund.  
10 Respondent contends Revenue and Taxation Code (R&TC) section 19306 prohibits the FTB from  
11 allowing appellant's claims for refund because they were filed after (1) four years from the due date of  
12 the return, (2) four years from the date the return was filed if it was filed within an extension period, and  
13 (3) one year from the date of the overpayment. (Resp. Op. Br., pp. 2-4.)

14                   Applicable Law

15                   Burden of Proof

16                   Respondent's determination is presumed correct and it is the taxpayer's burden to prove  
17 entitlement to the refund. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)  
18 Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and*  
19 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) When the taxpayer fails to present uncontradicted,  
20 credible, competent, and relevant evidence as to the issues in dispute, respondent's determination must  
21 be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer, supra.*)

22                   Statute of Limitations – Refund Claim

23                   The general statute of limitations for filing a refund claim is set forth in R&TC section  
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25 <sup>5</sup> Board of Equalization cases may be found at the Board's website ([www.boe.ca.gov](http://www.boe.ca.gov))

26 <sup>6</sup> Respondent states there are other provisions for different statute of limitations in certain circumstances such as when the  
27 Internal Revenue Service makes an adjustment that affects a taxpayer's California tax liability. For that reason, the form  
28 instructions request an explanation of "why the normal statute of limitations does not apply." Respondent asserts that as none  
of the special statutes of limitations applies to this case, the applicable statute of limitations is contained in R&TC section  
19306. (Resp. Op. Br., p. 3.)

1 19306. Under that section, the last day to file a claim for refund is the later of:

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

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

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

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

#### 19 No Duty to Inform

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

#### 24 Doctrine of Equitable Estoppel

25 Equitable estoppel is applied against the government only in rare and unusual  
26 circumstances and when its application is necessary to prevent manifest injustice. (See *Appeal of*  
27 *Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991.) The four elements of equitable estoppel  
28 are: (1) the government agency must be shown to have been aware of the actual facts; (2) the

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

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

#### 16 STAFF COMMENTS

17 The original due date for appellant's California 2000 tax return was April 15, 2001.  
18 Appellant's withholding payments were deemed paid on the last day prescribed for filing the return,  
19 pursuant to R&TC section 19002, subdivision (c)(1). As appellant's refund amount appears to consist  
20 fully of withholding payments, the one year statute of limitations for a claim for refund expired on  
21 April 15, 2002. The four year statute of limitations from the due date of the return expired on April 15,  
22 2005. While it does not appear that appellant filed a return within any extended filing date, if appellant  
23 did file a 2000 return by the extended filing date on October 15, 2001, the four year statute of limitations  
24 would have expired on October 15, 2005.

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

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

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

9 As appellant filed his amended returns for 2000, 2001, and 2002 on August 25, 2008, the  
10 statute of limitations expired for the tax years at issue. Appellant, however, appears to contend that the  
11 statute of limitations should be waived in his case because he relied on incorrect advice from  
12 respondent's employee who told him that his social security payments were includable in California  
13 taxable income and subsequently overpaid his taxes for the 2000, 2001, and 2002 tax years. Appellant  
14 contends that as his refunds already had been granted for the 2003 to 2006 tax years, there was no basis  
15 for the FTB to disallow the refunds for appellant's earlier overpayments. Appellant may wish to discuss  
16 and present evidence to support his apparent argument that he relied on the statements of respondent's  
17 employee such that the elements of equitable estoppel were met.

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