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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<sup>2</sup>**  
12 **GARY LAUB<sup>1</sup>** ) Case No. 468084

|  | <u>Year</u> | <u>Claim For Refund</u> |
|--|-------------|-------------------------|
|  | 2000        | \$5,816                 |

16 Representing the Parties:

17 For Appellant: Alexander Yen, TAAP<sup>3</sup>  
18 For Franchise Tax Board: Suzanne L. Small, Tax Counsel III

20 QUESTION: Whether appellant’s claim for refund is barred by the statute of limitations.

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23 <sup>1</sup> Appellant resides in San Diego. A proposed assessment for the appeal year was issued to appellant individually; appellant  
24 subsequently filed a joint return with his spouse, which respondent treated as a claim for refund. Respondent’s denial of the  
25 refund claim (in its “Statute of Limitations Letter” dated June 30, 2008), was issued to appellant individually. Appellant filed  
this appeal individually; his spouse did not join the appeal.

26 <sup>2</sup> This appeal was postponed from the February 23, 2010, hearing calendar and rescheduled to the June 15, 2010, hearing  
27 calendar to allow appellant’s representative to attend the oral hearing.

28 <sup>3</sup> Appellant submitted the appeal letter, Christine Barrett, a member of the Tax Appeals Assistance Program (TAAP),  
submitted appellant’s reply brief, and Rebecca Hagge, another member of TAAP, submitted appellant’s supplemental brief.  
Alexander Yen is currently appellant’s designated representative.

1 HEARING SUMMARY

2 Background

3 Appellant did not file a 2000 tax return by the due date. Respondent subsequently  
4 received information from this Board that appellant had an active sales permit and reported an  
5 unspecified amount of gross sales on a sales tax return. (Resp. Opening Br., p. 1.) On May 6, 2002,  
6 respondent mailed a notice and demand letter to appellant, informing him that it received information  
7 indicating he may be required to file a return for tax year 2000. In the notice and demand letter,  
8 respondent requested that appellant file a 2000 return, provide a copy of any filed return or explain why  
9 he was not required to file a return. (Resp. Opening Br., exhibit A.) According to respondent, appellant  
10 filed a frivolous or invalid form.<sup>4</sup> (Resp. Opening Br., p. 1.) On June 16, 2003, respondent mailed a  
11 second notice and demand letter to appellant, informing him that it received his 2000 California income  
12 tax return form and determined that it constitutes an invalid or frivolous invalid state income tax return.  
13 (Resp. Opening Br., exhibit B.) In the second notice and demand letter, respondent stated that appellant  
14 must respond by July 16, 2003, and it will assess a frivolous return penalty of \$500 if it does not receive  
15 a valid 2000 return. (*Ibid.*)

16 Respondent did not receive a response from appellant by the due date and issued a Notice  
17 of Proposed Assessment (NPA) to appellant on September 8, 2003. (Resp. Opening Br., exhibit C.)  
18 Respondent estimated appellant's taxable income of \$69,720.38 based on interest income of \$976.00  
19 reported by Washington Mutual Bank, FA, and estimated business income of \$68,744.38. In calculating  
20 the estimated business income, respondent used the gross sales from appellant's sales tax return and  
21 multiplied it by the average gross profit percentage for his (undisclosed) type of business. (*Ibid.*)  
22 Applying the tax rate for the single filing status, the NPA proposes a tax assessment of \$4,467 less an  
23 exemption credit of \$75 for a total tax liability of \$4,392. The NPA further proposes a late filing penalty  
24 of \$1,098, a failure to file upon demand penalty of \$1,098, and a filing enforcement fee of \$108, plus  
25 applicable interest. (*Id.* exhibit B.)<sup>5</sup> Appellant did not protest the NPA and the assessment became  
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28 <sup>4</sup> Respondent indicates that the tax return dated April 15, 2001, which appellant submitted with his appeal letter is the "valid"  
tax return filed on April 15, 2008. (Resp. Opening Br., p. 2.)

<sup>5</sup> Respondent apparently did not impose a frivolous return penalty of \$500.

1 final.

2 According to respondent, it began collection action by sending numerous notices to  
3 appellant and subsequently mailed collection notices to appellant's bank and employer. (Resp.  
4 Opening Br., p. 2.) Appellant called respondent after he received a copy of the Order to Withhold  
5 Personal Income Tax (OTW), which respondent mailed to appellant's bank, and a copy of the Personal  
6 Income Tax Earnings Withholding Order for Taxes (EWOT), which respondent mailed to appellant's  
7 employer. In this telephone conversation, appellant reportedly promised to file a valid 2000 tax return  
8 by a specific date and respondent consequently withdrew the OTW and modified the EWOT. When  
9 appellant failed to file a 2000 return by the promised date, the EWOT became effective. (*Ibid.*) In  
10 accordance with respondent's EWOTs, appellant's employers reportedly garnished wages from  
11 appellant's pay from June 23, 2004, to March 1, 2007, and remitted them to respondent. (*Ibid.*; App.  
12 Opening Br., Attachment.) As a result of the collection proceedings, respondent obtained total  
13 payments in the amount of \$5,816.<sup>6</sup> (*Id.* exhibit C.)

14 On April 15, 2008, appellant and his spouse reportedly filed a 2000 joint return, which  
15 respondent determined to be valid. (*Ibid.*) On that return, appellant and his spouse reported California  
16 adjusted gross income (AGI) of \$10,053, itemized deductions of \$15,782, a taxable income of zero  
17 and a total tax liability of zero. (App. Opening Br., Attachment.) Respondent processed the couple's  
18 2000 joint return and adjusted appellant's 2000 tax liability to zero and abated the late filing penalty,  
19 the failure to file upon demand penalty, and the filing enforcement fee, which resulted in a credit  
20 balance of \$5,816. (Resp. Opening Br., p. 2.) Respondent apparently treated the 2000 joint return as a  
21 claim for refund. Respondent subsequently sent appellant a statute of limitations letter dated June 30,  
22 2008, informing him that his claim for refund of \$5,816 was denied because the statute of limitations  
23 expired. (App. Opening Br., Attachment.)<sup>7</sup> This timely appeal followed.

#### 24 Appellant's Contentions

25 On appeal, appellant does not dispute that the 2000 joint return was not timely filed or  
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27 <sup>6</sup> It is not clear whether respondent imposed a collection cost recovery fee or a collection lien fee.

28 <sup>7</sup> For reasons unclear to staff, the June 30, 2008, the statute of limitations letter states that respondent received appellant's claim on May 15, 2008.

1 that respondent mailed the notice and demand letters and NPA to the proper address. Appellant asserts  
2 that it contacted respondent and its Taxpayers' Rights Advocate's Office in 2004 when respondent  
3 began garnishment of his wages. Appellant contends that from June 23, 2004, to March 1, 2007,  
4 respondent improperly garnished his wages in the amount of \$5,816 in satisfaction of a 2000 assessment  
5 because appellant did not owe any taxes for the 2000 tax year and he had no filing requirement in 2000.<sup>8</sup>  
6 Appellant submitted copies of a print out showing the weekly wage garnishments from his employers,  
7 Superior Technical Resources and Express Personnel Services. (App. Opening Br., Attachment.)  
8 Appellant asserts that he should not be required to establish he had no tax liability for 2000. Appellant  
9 further contends that respondent improperly denied his claim for refund on the ground it is barred by the  
10 statute of limitations. Appellant argues that the four-year statute of limitations only began to run on  
11 June 23, 2004, the date when respondent began to garnish his wages, and it would not have expired until  
12 June 23, 2008. According to appellant, the four-year statute of limitations would therefore not bar his  
13 claim for refund. Appellant does not discuss the one-year statute of limitations. Appellant also argues  
14 that in the interest of fairness and equity, the Board should reverse respondent's action denying him his  
15 claim for refund.

#### 16 Respondent's Contentions

17 Respondent argues that both the four-year and one-year statutes of limitations bar  
18 appellant's April 15, 2008, claim for refund. Respondent contends that the four-year statute of  
19 limitations expired on April 15, 2005, which is four years after the April 15, 2001, deadline for filing the  
20 2000 return, and the one-year statute of limitations expired on March 1, 2008, which is one year after the  
21 last payment received. Respondent further contends that the statute of limitations is strictly construed  
22 and appellant is not entitled to any waiver of the statute of limitations based on reasonable cause,  
23 extenuating circumstances or equitable grounds. Respondent contends that a claim for refund is still  
24 barred by the statutes of limitations even when it is later determined that the taxpayer never owed any  
25 tax or the taxpayer was not aware that he could file a claim for refund until after the statute of limitations  
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28 <sup>8</sup> In his opening brief, appellant also argues that "there was nothing 'owed' or 'paid' in or for tax year 2000 [sic] this money was taken in 2004, 2005, 2006, 2007 and returns were filed within the four year statute of limitations for year 2004, the year that they started taking the money." In the reply and supplemental briefs, appellant's TAAP representatives do not assert this specific argument and staff concludes that it was therefore withdrawn.

1 expired, citing *United States v. Dalm* (1990) 494 U.S. 596, 602; *Appeal of Richard M. and Claire P.*  
2 *Hammerman*, 83-SBE-260, Dec. 13, 1983. Respondent also argues that there is no legal authority for  
3 appellant's position that the four-year statute of limitations only commenced in 2004 when it began  
4 collection proceedings.

#### 5 Applicable Law

6 The relevant statute of limitations is set forth in Revenue and Taxation Code (R&TC)  
7 section 19306. R&TC section 19306 requires taxpayers to file a claim for refund within the later of:  
8 (1) four years from the date the return was filed (if timely filed within the specified extension periods);  
9 (2) four years of the due date of the return (without regard to any extensions of time to file); or (3) one  
10 year from the date of the overpayment. The Board has consistently held that the statute of limitations  
11 on claims for refund is explicit and must be strictly construed, without exception. (*Appeal of Michael*  
12 *and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978; *Appeal of James C. and Florence Meek*, 2006-SBE-  
13 001, Mar. 28, 2006.) Regardless of the reason, a taxpayer who fails to file a claim for refund within  
14 the statutory period is barred from filing a claim for refund at a later date. (*Appeal of Earl and Marion*  
15 *Matthiessen*, 85-SBE-077, July 30, 1985.) Previous opinions of the Board clearly hold that ignorance  
16 of the law does not excuse the delinquent filing of claims for refund (see *Appeal of Beverly J.*  
17 *Waslauk*, 79-SBE-029, Jan. 9, 1979; *Appeal of Tolbert D. Spardlin*, 75-SBE-010, Jan. 7, 1975; *Appeal*  
18 *of E.C. and P.M. Braeunig*, 70-SBE-004, Feb. 18, 1970), and respondent does not have a duty to  
19 inform appellant of the time within which a claim for refund must be filed (*Appeal of Earl and Marion*  
20 *Matthiessen, supra*). Federal courts have stated that fixed deadlines may appear harsh because they  
21 can be missed, but the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v.*  
22 *United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [quoting *United States v. Locke* (1985) 471 U.S.  
23 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].) The Board has also considered the doctrine of  
24 equitable tolling and held that, absent direction from the Legislature, the statute of limitations in  
25 R&TC section 19306 is not subject to equitable tolling. (*Appeal of James C. and Florence Meek,*  
26 *supra, Appeal of Earl W. and Patricia A. McFeaters*, 94-SBE-012, Nov. 30, 1994; see also *United*  
27 *States v. Brockamp* (1997) 519 U.S. 347.)

28 The statute of limitations may be extended in certain cases if there are federal

1 adjustments. Under R&TC section 19311, subdivision (a)(1), a refund claim “resulting from the  
2 [federal] adjustments” may be filed within two years from the date of the final federal determination.  
3 R&TC section 18622, subdivision (d), defines the date of the “final federal determination” as the date  
4 on which the adjustment is assessed pursuant to IRC section 6203.

5 R&TC section 19316 tolls the statute of limitations during a period of “financial  
6 disability,” which is defined by the statute as meaning that the taxpayer was unable to manage his or  
7 her financial affairs due to a medically determinable physical or mental impairment that is either  
8 deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12  
9 months. (Rev. & Tax. Code, § 19316, subs. (a) & (b)(1).) An individual taxpayer will not meet the  
10 provisions of R&TC section 19316 if, for any period, the individual’s spouse, or any other person, is  
11 legally authorized to act on the individual’s behalf in financial matters. (Rev. & Tax. Code, § 19316,  
12 subd. (b)(2).) In order to demonstrate the existence of a financial disability, an appellant must submit  
13 a signed affidavit from a physician that explains the nature and duration of any physical or mental  
14 impairments. (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In addition,  
15 an appellant must show that he or she satisfies the strict definition of “financial disability” such that he  
16 or she could not manage his or her financial affairs. (*Id.*) It is not sufficient to show that an appellant  
17 could not engage in a regular occupation or that he or she was “disabled” under other statutory  
18 definitions of disability. (*Id.*) In accordance with R&TC section 19316, respondent has published  
19 Form 1564 to allow taxpayers to substantiate a financial disability.

#### 20 STAFF COMMENTS

21 Appellant’s 2000 return was due on April 16, 2001. The four-year statute of limitations  
22 thus expired on April 16, 2005. Appellant and his spouse reportedly filed their 2000 joint return,  
23 which constitutes their claim for refund, on April 15, 2008, and therefore appellant’s claim for refund  
24 appears to be untimely under the four-year period. Alternatively, appellant’s claim for refund must  
25 have been made within one year of when the payment was made. Respondent contends that it  
26 collected the last payment for an undisclosed amount on March 1, 2007, and therefore appellant’s  
27 April 15, 2008, claim for refund is untimely under the one-year period as well. Assuming the last  
28 payment was in fact received on March 1, 2007, appellant’s claim for refund appears to be barred by

1 the one-year statute of limitations. Staff notes, however, that there is no document in the file that  
2 substantiates that the 2000 joint return was filed on April 15, 2008, or that respondent received the last  
3 payment in satisfaction of the 2000 tax assessment on March 1, 2007. In order to establish that  
4 appellant's claim for refund is in fact barred by the four-year and one-year statutes of limitations,  
5 respondent should be prepared to provide the Board and appellant, at least 14 days prior to the hearing,  
6 written evidence of the date appellant and his spouse filed the 2000 joint return, and all of the dates  
7 and amounts of payments it received in satisfaction of the 2000 tax assessment.<sup>9</sup> In addition,  
8 respondent should be prepared to discuss at the hearing why the June 30, 2008, statute of limitations  
9 letter states that respondent received appellant's claim for refund on May 15, 2008, when the 2000  
10 joint return was reportedly filed on April 15, 2008.

11 Appellant has not yet alleged or demonstrated that there was any federal adjustment for  
12 tax year 2000 that may extend the statute of limitations for filing a claim for refund under R&TC  
13 section 19311. Nor has he alleged or demonstrated that he or his spouse suffered from a "financial  
14 disability" for purposes of R&TC section 19316 (i.e., that he or she could not manage his or her own  
15 financial affairs); nor has appellant demonstrated impairment that continued for a period long enough  
16 to toll the statute of limitations beyond the deadline to file a claim for refund under the four-year  
17 period or one-year period of limitation. Moreover, neither one may be considered "financially  
18 disabled" for any period during which the other was legally authorized to act on his or her behalf in  
19 financial matters. In the event that appellant wishes to assert the existence of a federal adjustment for  
20 purposes of R&TC section 19311, he should submit supporting written evidence at least 14 days prior  
21 to the hearing date. Similarly, if he wishes to assert a financial disability for purposes of R&TC  
22 section 19316, he should submit a signed affidavit from a physician at least 14 days prior to the  
23 hearing date.

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28 <sup>9</sup> Exhibits should be submitted to: Claudia Madrigal, Board of Equalization, Board Proceedings Division, P. O. Box 942879  
MIC: 80, Sacramento, CA 94279-0080.