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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 **JACQUELINE McKECHNIE** ) **Case No. 683821**  
13 )

14 Year<sup>1</sup> Claim for  
15 1993 Refund  
\$ 3,661.81<sup>2</sup>

16 Representing the Parties:

17 For Appellant: Jacqueline McKechnie  
18 For Franchise Tax Board: Anne Mazur, Specialist

20 QUESTIONS: (1) Whether appellant has shown that the amnesty penalty should be abated;  
21 (2) Whether appellant has shown that interest may be abated; and  
22 (3) Whether appellant has shown that the collection cost recovery and lien fees  
23 should be abated.  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The contested liability for this year resulted from penalty, interest, and collection and lien fees on a final balance due. In  
27 1997, respondent issued a Notice of Proposed Assessment and subsequently issued billing notices to appellant's last-known  
28 address. However, appellant, who was living outside of the United States for several years, did not respond or submit  
payment.

<sup>2</sup> According to respondent, the correct amount of the claim for refund is \$3,646.11, which consists of the following: amnesty  
penalty of \$698.52, interest of \$2,826.59, and collection and lien fees totaling \$121.00.

1 HEARING SUMMARY

2 Background

3 Appellant filed a 1993 nonresident tax return on June 22, 1994. According to  
4 respondent's records, appellant reported adjusted gross income of \$22,258 and total deductions of  
5 \$10,148 for a taxable income of \$12,110 and tax of \$216. After applying the exemption credit of \$64,  
6 appellant reported a total tax liability of \$152. Appellant further claimed withholding of \$888.26 and  
7 requested a refund of \$736.26. Respondent issued a refund to appellant on September 1, 1994, in the  
8 amount of \$751.96 (i.e., \$736.26 + \$15.70 (interest)) at an address on Glen Manor Drive in Toronto,  
9 Canada (Canada Address).<sup>3</sup> (Resp. Op. Br., pp. 1-2, Exhs. A & B.)

10 Respondent subsequently audited appellant's return. On July 8, 1997, respondent  
11 mailed a Notice of Proposed Assessment (NPA) to appellant for adjustments totaling \$46,225,<sup>4</sup> to an  
12 address in Munich, Germany (Germany Address).<sup>5</sup> The NPA reflected additional tax of \$1,103.  
13 Appellant did not protest the NPA and the NPA became final on September 6, 1997. According to  
14 respondent's records, it mailed appellant a Statement of Tax Due on September 29, 1997.<sup>6</sup> Appellant  
15 did not pay the resulting deficiency. (Resp. Op. Br., p. 2, Exhs. C & D.)

16 According to respondent's voluntary collection procedures, it would have mailed several  
17 additional notices to appellant before commencing involuntary collection activity.<sup>7</sup> When appellant  
18 failed to pay the balance due in response to these collection notices, on January 17, 1998, respondent  
19 filed a tax lien, imposed an \$18 lien fee and a \$103 collection cost recovery fee. Respondent states  
20 that, if mail had been returned, respondent would have made attempts to locate appellant and find payer  
21 sources or other assets to collect the liability. On January 29, 2002, respondent determined that  
22

23 <sup>3</sup> According to respondent's records, it performed a bad address trace on the refund, approximately five months after the  
24 refund was issued. Respondent states that the refund may have been returned to respondent, which resulted in the trace.

25 <sup>4</sup> This consisted of \$45,347 of wages, net capital gains of \$378, and a math error of \$500.

26 <sup>5</sup> According to respondent, it discovered the Germany Address as a result of a trace on the returned refund.

27 <sup>6</sup> Respondent did not retain a copy of this notice.

28 <sup>7</sup> Prior to June 2000, notices were sent and automated collection activity was performed from respondent's former collection  
system. Respondent states that appellant's records from the former collection system have been destroyed and are no longer  
available.

1 appellant's 1993 tax year liability was temporarily uncollectible under Government Code sections  
2 13940 and 13943.1 because it was no longer economically feasible to pursue collection activity against  
3 appellant.<sup>8</sup> Respondent states that it performed a bad address trace on December 12, 2002, without  
4 success. (Resp. Op. Br., p. 2.)

5 In 2004, the California Legislature enacted Senate Bill 1100 which authorized  
6 respondent to institute an income tax amnesty program for tax years prior to January 1, 2003.

7 Appellant did not participate in the amnesty program. According to respondent, it mailed an Amnesty  
8 Statement of Tax Due to appellant on November 15, 2006, which reflected an amnesty penalty of  
9 \$698.52, in addition to the tax and accrued interest.<sup>9</sup>

10 Appellant thereafter filed a 2010 tax return with a current mailing address. Respondent  
11 subsequently issued a Balance Due Notice on March 5, 2012, to appellant at her current address, which  
12 reflected a balance due of \$4,764.81. Appellant paid this amount on March 15, 2012, and subsequently  
13 filed a claim for refund for interest and penalties. In her claim for refund letter, appellant stated that she  
14 is a Canadian citizen. She stated that she left the United States in February 1993 and returned to  
15 Canada. She then lived in Germany from September 1993 to September 1995. She then returned to  
16 Canada in September 1995 and lived there through July 2010, when she returned to the United States.  
17 After review, respondent denied the claim for refund. (Resp. Op. Br., p. 3, Exhs. E & F; Appeal Letter,  
18 Atth.)

19 Appellant then filed this timely appeal.

## 20 Contentions

### 21 Appellant

22 Appellant contends that respondent's denial of her claim for refund does not take into  
23 account her special circumstances of living outside of the United States. Appellant asserts that  
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25 <sup>8</sup> Government Code section 13940 provides that any state agency required to collect state taxes, licenses, fees or money  
26 owing to the state that is due and payable may be discharged if the debt is uncollectible or the amount of the debt does not  
27 justify the cost of collection. Government Code section 13943.1 provides that a discharge granted pursuant to this chapter  
does not release any person from the payment of the debt that is due and owing to the state.

28 <sup>9</sup> Respondent does not have a copy of this notice. According to respondent, it would have used appellant's last-known  
address which was the Germany Address.

1 respondent's delay in its attempt to notify her of the NPA is the sole cause for the nonpayment and  
2 subsequent penalties. Appellant states that, by the time the NPA was issued on July 6, 1997, more than  
3 three years after she filed the return, she moved from Germany to Canada. Appellant further states that,  
4 by the time respondent issued the NPA, her mail forwarding service expired and she never received the  
5 NPA. (Appeal Letter.)

6 Appellant asserts that the FTB did not make any further attempts to locate and notify  
7 appellant. Appellant states that, after she moved out of the United States, she was fully confident that  
8 her federal and state tax obligations were fulfilled and that she had no reason to believe she would need  
9 to contact the FTB. She states that she continuously paid her taxes reliably and on time. While  
10 appellant acknowledges that the adjustments reflected on the NPA are correct, she requests a refund of  
11 the interest and penalties because she was not made aware of the deficiency until March 20, 2012.  
12 (Appeal Letter.)

13 Respondent

14 Respondent contends that appellant has not shown that the amnesty penalty should be  
15 abated. Respondent contends that the Board only has jurisdiction to consider whether the amnesty  
16 penalty was properly computed. Respondent contends that, in accordance with R&TC section 19777.5,  
17 subdivision (a)(1), it properly computed the amount of the penalty as 50 percent of the interest on the  
18 balance due of \$1,103<sup>10</sup> that accrued from April 15, 1994 to March 31, 2005. Respondent states that, as  
19 the amount of interest that accrued on the balance due was \$1,397.03, the amnesty penalty was properly  
20 computed to \$698.52 (i.e., 50% x \$1,397.03). Respondent contends that appellant has not asserted that  
21 the amnesty penalty was improperly computed nor has she argued that she timely participated in the  
22 2005 amnesty program. (Resp. Op. Br., pp. 3-4.)

23 Respondent also contends that appellant has not shown that interest should be abated  
24 pursuant to R&TC section 19104. Respondent acknowledges that it has the discretion to abate certain  
25 interest on deficiencies attributable in whole or in part to any unreasonable error or delay by an officer  
26

27  
28 <sup>10</sup> The balance due includes: total tax of \$1,255.00 less payments on or before March 31, 2005 of \$888.26, plus a  
September 1, 1994 refund of \$736.26 (i.e., \$1,255.00 - \$888.26 + \$736.26). Respondent states that collection fees are not  
interest bearing and are not included in the amnesty penalty computation.

1 or employee of respondent in the performance of a ministerial or managerial act.<sup>11</sup> Respondent  
2 contends there is no abuse of its discretion where respondent's determination to not abate interest has a  
3 sufficient factual basis, citing *McDonough v. Goodcell* (1939) 13 Cal.2d 741. (Resp. Op. Br., p. 4-5.)

4 Respondent further contends that appellant's argument that respondent's delay of over  
5 three years from the date of appellant's original filing date to mail the NPA caused the interest to accrue  
6 is an insufficient basis to allow for an abatement of interest. Respondent contends that the timeliness of  
7 an examination and later NPA that is issued within the statute of limitations is not an error or delay for  
8 purposes of the interest abatement statute, citing *Charles A. Nerad v. Commissioner*, T.C. Memo. 1999-  
9 376. Respondent notes that as appellant filed her return on June 22, 1994, respondent was required to  
10 mail the NPA by June 22, 1998. As such, respondent contends that it timely mailed the NPA on July 8,  
11 1997. Respondent further notes that, as its first written contact with appellant for 1993 was the issuance  
12 of the NPA, interest that accrued prior to July 8, 1997, may not be abated. (Resp. Op. Br., p. 6.)

13 Respondent further contends that it committed no error or delay when it mailed notices  
14 to appellant's last-known address. Respondent contends that courts have held that the mailing of  
15 respondent's notice to the last-known address is adequate notice whether or not the taxpayer actually  
16 received the notice, citing the *Appeal of W.L. Bryant*, 83-SBE-180, decided by the Board on August 17,  
17 1983. Respondent contends that the last-known address rule is designed to protect the taxing agency  
18 where the taxing agency does not have a taxpayer's correct address due to the failure of the taxpayer to  
19 notify the agency of a change, citing *Delman v. Comm'r* (3rd Cir. 1967) 384 F.2d 929. Respondent  
20 acknowledges that, where a taxing agency has reason to believe that an address previously provided by  
21 the taxpayer is no longer correct, the taxing agency has a duty to exercise "reasonable diligence" in  
22 attempting to find the correct address. Respondent contends that whether a taxing agency has exercised  
23 "reasonable diligence" is a question to be resolved upon the facts and circumstances of the particular  
24 case, citing *U.S. v. Bell* (1995) 188 B.R. 650 and *Gille v. U.S.* (1993) 888 F.Supp.521. (Resp. Op. Br.,  
25 pp. 6-7.)

26  
27  
28 <sup>11</sup> The managerial act provisions of R&TC section 19104 only apply to tax years beginning on or after January 1, 1998.  
Because the tax year at issue is 1993, interest abatement cannot be considered for errors or delays in the performance of a  
managerial act.

1 Respondent contends that appellant has not alleged that she provided respondent with  
2 clear and concise notice of a change in address after she moved from her Canada Address. Respondent  
3 contends that it properly sent the requested refund to appellant's Canada Address as shown on her 1993  
4 return. Respondent contends that, by the time it issued the NPA, respondent discovered that appellant  
5 no longer lived in Canada and used "reasonable diligence" in discovering the Germany Address for  
6 appellant. Respondent contends that it used reasonable diligence to locate appellant once it had reason  
7 to believe that appellant had a more current address in Germany and, therefore, the Germany Address  
8 was appellant's last-known address at the time respondent mailed the NPA and subsequent notices prior  
9 to 2012. Respondent further notes that it diligently performed another address search on December 12,  
10 2002, but did not find a better address. With regard to appellant's contention that her residence abroad  
11 constitutes a special circumstance, respondent contends that appellant's residence likely made it more  
12 difficult for respondent to locate appellant. Respondent notes that it is questionable whether respondent  
13 reliably received returned mail from foreign countries and respondent's resources do not necessarily  
14 reach outside of the United States. Accordingly, respondent contends that it used reasonable diligence  
15 to search for appellant when appellant failed to inform respondent of her changes of address.  
16 Respondent further contends that the mailing of notices to appellant's last-known address is adequate  
17 notice whether or not she actually received the notices. Therefore, respondent contends that there was  
18 no error or delay in the issuance of any of the collection or other notices for the appeal year because the  
19 notices were issued to appellant's last-known address. (Resp. Op. Br., pp. 7-8.)

20 Respondent further contends that its determination to not pursue collection activity is not  
21 a ministerial act because its determination to deem a debt uncollectible is discretionary. Respondent  
22 contends that it deemed appellant's account temporarily uncollectible on January 29, 2002 (placed into  
23 discharge status), because respondent could not locate appellant and it was not economical to pursue  
24 further collection action. Respondent attempted to search for a more current address on December 12,  
25 2002, and was unsuccessful. Appellant's account then was placed back into discharge on February 12,  
26 2003. Respondent contends that its determination to place an account in an uncollectible status and a  
27 subsequent decision to maintain the account in such status is discretionary in nature. Respondent notes  
28 that under the definition of ministerial act in Treasury Regulation section 301.6404-2(b)(2), a

1 ministerial act is a procedural or mechanical act that does not involve the exercise of judgment or  
2 discretion. Therefore, the interest that accrued during the period when appellant's account was placed  
3 and maintained in a discharge status, from January 29, 2002 to when appellant filed her 2010 return on  
4 May 15, 2011, may not be abated. (Resp. Op. Br., pp. 8-9.)

5 Respondent contends that no interest may be abated prior to its first written contact to  
6 appellant regarding the 1993 tax year which occurred on July 8, 1997. Respondent further contends  
7 that a significant aspect of the time period is attributable to appellant who failed to notify respondent of  
8 her change in address. Therefore, respondent contends that it cannot abate interest in this matter.  
9 (Resp. Op. Br., pp. 9-10.)

10 With regard to the collection and lien fees, respondent contends that it properly imposed  
11 the fees because it issued valid notices to appellant's last-known address prior to the imposition of the  
12 fees. Respondent contends that there is no reasonable cause exception to the imposition of these fees.  
13 (Resp. Op. Br., p. 10.)

#### 14 Applicable Law

##### 15 Amnesty Penalty

16 In 2004, the California Legislature enacted Senate Bill 1100 which authorized  
17 respondent to institute an income tax amnesty program. (Rev. & Tax. Code, §§ 19730-19738.) Under  
18 R&TC section 19777.5, there are essentially two amnesty penalties: one amnesty penalty for unpaid  
19 liabilities that existed at the time of amnesty, and a second post-amnesty penalty based on subsequent  
20 assessments, including self-assessments. (Rev. & Tax. Code, § 19777.5, subds. (a)(1) and (a)(2).) As  
21 relevant to this appeal, the amnesty penalty is calculated as an amount equal to 50 percent of the  
22 accrued interest payable under R&TC section 19101 for the period beginning on the last date  
23 prescribed by law for the payment of that tax and ending on the last day of the amnesty period  
24 (March 31, 2005). (Rev. & Tax. Code, § 19777.5, subd. (a)(1); Rev. & Tax. Code, § 19731.)

25 The Board's jurisdiction to review an amnesty penalty is extremely limited. For  
26 example, a taxpayer has no right to an administrative protest or appeal of an unpaid amnesty penalty.  
27 (Rev. & Tax. Code, § 19777.5, subd. (d).) A taxpayer also has no right to file an administrative claim  
28 for refund of a paid amnesty penalty, except upon the basis that the penalty was not properly computed.

1 (*Id.* subd. (e).) Therefore, the Board’s jurisdiction to review an amnesty penalty is limited to situations  
2 where the penalty is assessed and paid, the taxpayer files a timely appeal from a denial of a refund  
3 claim, and the taxpayer attempts to show a computational error in the penalty.

#### 4 Interest Abatement

5 Interest is not a penalty, but is merely compensation for a taxpayer’s use of the money.  
6 (Rev. & Tax. Code, § 19101, subd. (a); *Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977;  
7 *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) For purposes of this appeal, under R&TC  
8 section 19104,<sup>12</sup> respondent may abate all or a part of any interest on a deficiency to the extent that  
9 interest is attributable in whole or in part to any unreasonable error or delay committed by respondent  
10 in the performance of a ministerial act. (Rev. & Tax. Code, § 19104, subd. (a)(1).) An error or delay  
11 can only be considered when no significant aspect of the error or delay is attributable to the appellant  
12 and after respondent has contacted the appellant in writing with respect to the deficiency or payment.  
13 (Rev. & Tax. Code, § 19104, subd. (b)(1).) There is no reasonable cause exception to the imposition of  
14 interest. (*Appeal of Audrey C. Jaegle, supra.*)

15 The provisions of R&TC section 19104, subdivision (a)(1), are substantially similar to  
16 the federal interest abatement provisions in Internal Revenue Code section 6404(e)(1). When a  
17 California statute is substantially identical to a federal statute (as in the case of interest abatement),  
18 federal law interpreting the federal statute may be considered highly persuasive with regard to the  
19 California statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) According to  
20 Treasury Regulation section 301.6404-2(b)(2), a “ministerial act” is defined as:

21 [A] procedural or mechanical act that does not involve the exercise of judgment or  
22 discretion, and that occurs during the processing of a taxpayer’s case after all  
23 prerequisites to the act, such as conferences and review by supervisors, have taken place.  
A decision concerning the proper application of federal tax law (or other federal or state  
law) is not a ministerial act.<sup>13</sup>

24  
25 <sup>12</sup> An appellant may also qualify for interest abatement under R&TC sections 19112 or 21012. R&TC section 21012 does  
26 not appear applicable here because there has been no reliance on any written advice requested of respondent. Under R&TC  
27 section 19112, interest may be waived for any period for which respondent determines that an individual or fiduciary  
28 demonstrates an inability to pay that interest solely because of extreme financial hardship caused by a significant disability  
or other catastrophic circumstance. This statute does not appear to provide any authority for the Board to review the FTB’s  
determination whether to abate interest for extreme financial hardship.

<sup>13</sup> In the *Appeal of Michael and Sonia Kishner*, 99-SBE-007, decided on September 29, 1999, the Board adopted this  
Treasury Regulation language defining ministerial acts for purposes of interest abatement pursuant to R&TC section 19104.

1           The Board’s jurisdiction in an interest abatement case is limited by statute to a review of  
2 respondent’s determination for an abuse of discretion. (Rev. & Tax. Code, § 19104, subd. (b)(2)(B).)  
3 To show an abuse of discretion, the appellant must establish that, in refusing to abate interest,  
4 respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law.  
5 (*Woodral v. Comm’r* (1999) 112 T.C. 19, 23.) Interest abatement provisions are not intended to be  
6 routinely used to avoid the payment of interest, thus an abatement should be ordered only “where  
7 failure to abate interest would be widely perceived as grossly unfair.” (*Lee v. Comm’r* (1999) 113 T.C.  
8 145, 149.) The mere passage of time does not establish error or delay that can be the basis of an  
9 abatement of interest. (*Id.* at p. 150.)

#### 10           Timeliness of the NPA

11           R&TC section 19057 provides that, except for fraudulent or false returns, every notice of  
12 proposed deficiency assessment must be mailed within four years of the date a taxpayer filed his or her  
13 return.

#### 14           Mailing Requirements for Notices

15           R&TC section 18416<sup>14</sup> sets out the statutory mailing guidelines that the FTB is required  
16 to follow. The statute first provides that any notice may be given if sent by first class prepaid postage.  
17 (Rev. & Tax. Code, § 18416, subd. (a).) Second, any notice mailed to a taxpayer’s last-known address  
18 is sufficient. (Rev. & Tax. Code, § 18416, subd. (b).) Third, the statute provides that the last-known  
19 address shall be the address that appears on the taxpayer’s last return filed with the FTB, unless the  
20 taxpayer has provided to the FTB clear and concise written or electronic notification of a different  
21 address, or the FTB has an address that it has reason to believe is the most current address for the  
22 taxpayer. (Rev. & Tax. Code, § 18416, subd. (c).)

23           It is well settled that respondent’s mailing of a notice to a taxpayer’s last-known address  
24 is considered sufficient notification even if the notice never actually reaches the taxpayers. (*Appeal of*  
25 *Jon W. and Antoinette O. Johnston*, 83-SBE-238, Oct. 26, 1983.) This “last-known address rule”  
26 protects the taxing agency and the statutory scheme of assessment and appeal from a taxpayer’s failure  
27

28 <sup>14</sup> R&TC section 18416 was added by Stats. 1993, ch. 31 § 26 (SB 3), effective June 15, 1993, operative January 1, 1994.

1 to inform the taxing agency of a change in address. (*Delman v. Comm'r, supra* at 933.) For the FTB's  
2 notice to be proper, the law provides that it is not necessary for the FTB to prove the notice was  
3 received by the taxpayer. (See *United States v. Zolla* (9th Cir. 1984) 724 F.2d 808.) It is sufficient that  
4 the notice was mailed to the taxpayer's last-known address and it was not returned to the FTB as  
5 undelivered. (*Id.*) Application of the last-known address rule places the responsibility on the taxpayer  
6 to notify taxing agencies of any changes in address. (*Appeal of Ronald A. Floria*, 83-SBE-003, Jan. 3,  
7 1983.) A taxpayer must take necessary steps to ensure the receipt of his or her mail if the taxpayer  
8 moves after filing his or her return. (*Appeal of Ronald A. Floria, supra*; *Appeal of Winston R.*  
9 *Schwychart*, 75-SBE-035, Apr. 22, 1975.)

#### 10 Collection Cost Recovery and Lien Fees

11 R&TC section 19254 authorizes the imposition of a collection cost recovery fee when  
12 the FTB mails notice to a taxpayer that the continued failure to file a return may result in the imposition  
13 of the fee. In addition, R&TC sections 19221 and 19209 provide that, if a taxpayer fails to pay any  
14 liability at the time it becomes due and payable, respondent is authorized to secure and release liens and  
15 to charge the taxpayer for the lien fee. Once properly imposed, there is no provision in the statutes that  
16 excuses respondent from imposing the collection cost recovery fee (or lien fee) for any circumstances,  
17 including reasonable cause. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)

#### 18 STAFF COMMENTS

##### 19 Amnesty Penalty

20 For purposes of the amnesty penalty, respondent computed the balance due, as of  
21 March 31, 2005, to equal \$1,103.00 (i.e., \$1,255.00 (total tax due) - \$888.26 (withholding) + \$736.26  
22 (initial refund amount)) and, as a result, calculated the amount of interest that accrued from April 15,  
23 1994 to March 31, 2005, on that amount. However, it appears that appellant never cashed the refund,  
24 as respondent ran a trace on the returned refund. As such, respondent should be prepared to discuss  
25 whether the balance due, for purposes of calculating the amnesty penalty is correct, and whether the  
26 interest amount on which the amnesty penalty is based should be reduced. If respondent concedes that  
27 an adjustment is appropriate, respondent should, at least 14 days prior to the oral hearing, provide a  
28 response along with a revised amnesty penalty calculation.

1                    Interest

2                    As discussed above, it appears that appellant did not cash the refund. As such, it appears  
3 that appellant's additional tax due (including the conceded adjustments reflected on the NPA) was  
4 \$366.74 (i.e., \$1,255.00 - \$888.26), rather than \$1,103.00 as computed by respondent. Respondent  
5 should be prepared to discuss whether an adjustment to interest based on the additional tax due is  
6 appropriate. If so, respondent should, at least 14 days prior to the oral hearing, provide a response  
7 along with a revised interest calculation.

8                    With regard to the remaining interest, appellant should be prepared to explain how  
9 respondent abused its discretion in disallowing her claim for refund. Appellant appears to contend that  
10 the interest accrued solely due to the delay by respondent in issuing the NPA and the error by  
11 respondent in failing to locate and notify appellant of the tax liability. Contrary to appellant's  
12 contention that respondent did not try to locate appellant, however, the record apparently reflects that  
13 respondent did attempt to locate appellant. When respondent had reason to believe appellant's Canada  
14 Address (as listed on her return) was no longer appellant's correct address, it appears that respondent  
15 searched for, and found, the Germany Address. It appears that respondent had reason to believe that  
16 the Germany Address was appellant's last-known address. As respondent issued the NPA to appellant  
17 at the Germany Address within four years of the filing of the 1993 return as required by R&TC section  
18 19057, it appears that there was no unreasonable delay or error by respondent issuing the NPA on  
19 July 8, 1997. Furthermore, respondent conducted a subsequent search for a more current address on  
20 December 12, 2002, in connection with collection activities, and was unsuccessful. It appears that  
21 respondent satisfied the notice requirements pursuant to R&TC section 18416 by mailing the NPA and  
22 subsequent notices to appellant's last-known address.

23                    Appellant should be prepared to explain whether her address in Canada from September  
24 1995 through July 2010 was the same Canada Address listed on her return. In addition, appellant  
25 should be prepared to discuss what steps she took to ensure the receipt of her mail, including the  
26 circumstances of her mail forwarding service.

27                    With regard to respondent's determination to place and maintain appellant's account in a  
28 temporary uncollectible status, it appears that this determination requires judgment and discretion and

1 accordingly, is not a ministerial act.

2 Collection and Lien Fees

3 It appears that respondent used appellant’s last-known address when mailing the  
4 collection and lien notices to appellant at her Germany Address. Once the notices are properly issued,  
5 there appears to be no provision in R&TC sections 19254, 19221 and 19209 that allow abatement of the  
6 imposed fees for any reason, including reasonable cause.

7 Additional Evidence

8 Pursuant to California Code of Regulations, title 18, section 5523.6, if a party wants to  
9 provide additional evidence to the Board, that party should submit the additional evidence to the Board  
10 Proceedings Division at least 14 days prior to the oral hearing.<sup>15</sup>

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<sup>15</sup> Evidence exhibits should be sent to: Khaaliq Abd’Allah, Associate Governmental Program Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.