

1 Louis A. Ambrose
Tax Counsel
2 Board of Equalization, Appeals Division
450 N Street, MIC:85
3 P.O. Box 942879
Sacramento CA 95814
4 Tel: (916) 445-5580
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 **ROBERT M. MILLER¹**) Case No. 449286
13)

	<u>Year</u>	<u>Claim</u>
	2000	for Refund
		\$4,291.69

17 Representing the Parties:

18 For Appellant: Theodore Fedoruk, TAAP²

19 For Franchise Tax Board: Diane L. Ewing, Tax Counsel III

21 **QUESTION:** Whether appellant's claim for refund is barred by the statute of limitations.

22 **HEARING SUMMARY**

23 Background

24 Appellant failed to file a 2000 California income tax return by the statutory deadline and,
25 thereafter, respondent determined, based on income information from various sources, that appellant

27 ¹ Appellant appears to reside in San Diego.

28 ² Appellant submitted the Appeal Letter. Theodore Fedoruk, from the Tax Appeals Assistance Program (TAAP), submitted appellant's Reply Brief.

1 was required to file a return. On May 6, 2002, respondent mailed a Request for Tax Return to appellant
2 and, after receiving no response, respondent issued a Notice of Proposed Assessment (NPA) to appellant
3 on August 28, 2002. The NPA stated that respondent received a federal Form 1099-OID showing \$47 in
4 income from a credit union and two Forms 1099 showing payments of \$9,035 and \$1,870 from two
5 different insurance companies. Respondent also received information that appellant was licensed by the
6 California Department of Insurance. Based on that licensing information, respondent estimated business
7 activity income of \$49,907, in addition to the Form 1099 income, for total estimated income of \$60,859
8 on the NPA. (Resp. Opening Br., pp.1-2. and Exhibit B.)

9 Respondent applied a standard deduction of \$2,811 for estimated taxable income of
10 \$58,048. The tax on that amount was \$3,640 which was reduced by a \$75 personal exemption credit for
11 a tax due amount of \$3,565. In addition, the NPA imposed a penalty of \$891.25 for late filing of the
12 return and applicable interest. Appellant did not protest the NPA which became final. Respondent
13 mailed appellant a notice of tax due to which appellant did not respond. Respondent then initiated
14 collection actions and between May 19, 2003, and April 12, 2005, collected \$5,037.16. Respondent also
15 transferred \$20.63 from appellant's 2003 account on May 13, 2004, and \$200.48 from his 2004 account
16 on May 7, 2005. ((Resp. Opening Br., p.2.)

17 On July 13, 2005, appellant filed a 2000 California Resident Income Tax Return
18 (Form 540), in which he claimed married filing jointly filing status and one dependent exemption but the
19 Form 540 was not signed by appellant's spouse. Appellant reported \$24,628 federal adjusted gross
20 income, claimed a standard deduction of \$5,622 based on the married filing jointly status and \$19,006
21 taxable income. Appellant also claimed exemption credit in the amount of \$385, and reported zero tax
22 liability. Respondent accepted appellant's 2000 Form 540 as filed and adjusted appellant's 2000
23 account which resulted in an overpayment. Of the amounts collected, \$865.58 was collected within one
24 year of the date appellant's return was received. For that reason, respondent transferred that amount
25 plus \$2.49 in interest to appellant's 2001 account for payment of amounts due in that taxable year.
26 However, respondent denied the refund of the balance based on respondent's position that it was barred
27 by the statute of limitations. (Resp. Opening Br., p. 2.)

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1 On October 15, 2007, appellant submitted a claim for refund in which appellant stated
2 that he failed to file a timely return for taxable year 2000 because he was in Finland for the birth of his
3 child in October 2001 and after March 2002 he was engaged in litigation in an international court to gain
4 custody of his children. Respondent denied appellant's claim for refund and appellant filed this timely
5 appeal. (Resp. Opening Br., p. 2.)

6 Contentions

7 Appellant's Contentions

8 In the Appeal Letter, appellant states that he appeals the denial of his claim for refund
9 and that the check issued by respondent for the portion of the refund was lost and never cashed.
10 Appellant requests that the monies levied on his bank accounts either be returned to those same accounts
11 or paid to him directly. If the money is not redeposited or paid to him, appellant requests that
12 respondent pay the money to the Internal Revenue Service (IRS) to satisfy a current federal tax liability.
13 (App. Reply Br., p.1.)

14 In his Reply Brief, appellant states that he was living in Finland from March 2002 until
15 April 2003 attempting to obtain custody of his children and, for that reason, he did not receive the NPA
16 issued on August 28, 2002. Appellant further states that he first became aware of the Notice of Tax Due
17 and the collection actions in April 2003 when he returned to the United States. Because appellant was
18 out of the country when they were issued, appellant asserts that he "lacked notice and lacked knowledge
19 of tax due for 2000" and had no opportunity to protest the NPA or to dispute the Notice of Tax Due.
20 Due to the lack of notice and knowledge, appellant contends that the statute of limitations should be
21 waived for the 13 months that appellant was outside the United States. (App. Reply Br., pp. 1-2.)

22 Respondent's Contentions

23 Respondent contends that appellant filed his 2000 return beyond the four-year statute of
24 limitations so that any overpayments are time-barred for the four-year statute of limitations. However,
25 respondent states that some payments were received or transferred within one year of appellant's claim
26 for refund and that a refund or credit of those amounts was not barred by the one-year statute of
27 limitations. Respondent states that the allowed amounts (\$865.58 and \$2.49 of accrued interest) were
28 transferred to pay amounts due on appellant's 2001 account. Respondent asserts that an additional

1 refund or credit of the balance is barred by both the one-year and the four-year statute of limitations.
2 Respondent contends that appellant has not presented a valid argument for tolling the statute of
3 limitations. Respondent asserts that the statute of limitations may only be tolled for financial disability
4 and appellant has not presented any evidence of financial disability. (Resp. Opening Br., pp.3-4.)

5 Applicable Law

6 Burden of Proof

7 The FTB's determination of tax is presumed to be correct, and a taxpayer has the burden
8 of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Aaron and Eloise Magidow*,
9 82-SBE-274, Nov. 17, 1982.)³ Unsupported assertions are not sufficient to satisfy a taxpayer's burden
10 of proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

11 Statute of Limitations

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

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

18 The language of the statute of limitations is explicit and must be strictly construed.
19 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) It is a taxpayer's responsibility to
20 file a claim for refund within the timeframe prescribed by law. (*Appeal of Earl and Marion*
21 *Matthiessen*, 85-SBE-077, July 30, 1985.) Federal courts have stated that fixed deadlines may appear
22 harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of
23 the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing
24 *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

25 Tolling for Financial Disability

26 R&TC section 19316 tolls the statute of limitations during a period of "financial
27 disability," which is defined by the statute as meaning that the taxpayer was unable to manage his or her

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

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

14 STAFF COMMENTS

15 The parties do not dispute that the applicable statutory limitations period for filing a
16 claim bars as untimely refund of the amount in issue. The due date of the 2000 tax year return was
17 April 15, 2001, so the last day to file a timely claim for refund with respect to the amount in issue would
18 have been April 15, 2005. Appellant states that he first became aware of the Notice of Tax Due and the
19 collection actions in April 2003, when he returned to the United States and, for that reason, appellant
20 asserts that he "lacked notice and lacked knowledge of tax due for 2000" and had no opportunity to
21 protest the NPA or to dispute the Notice of Tax Due. Thus, if, as appellant states, he was aware of the
22 asserted tax deficiency in April 2003 then he had two years within which to pay the tax and to file a
23 timely claim for refund. At the hearing, appellant should explain why he failed to act during that period.
24 In addition, appellant should provide any evidence of financial disability if he believes that the
25 limitations period should be tolled for that reason.

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