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BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**HEARING SUMMARY**
	PERSONAL INCOME TAX APPEAL
MARY SHAMOUEL AND	Case No. 475296
EDMOND SHAMOUEL[1]	

Year	Claim For Refund
2002	$11,637

Representing the Parties:

For Appellants: Mary Shamouel
Andrew D. Allen, Tax Appeals Assistance Program
Golden Gate University School of Law

For Franchise Tax Board: Suzanne L. Small, Tax Counsel III

QUESTION: Whether appellants' refund claim is barred by the statute of limitations.

HEARING SUMMARY

Background

For the 2002 tax year, respondent received information indicating that appellant-husband received income sufficient to prompt a return filing. On December 29, 2003, respondent sent appellant-

[1] Appellants reside in the City of Pleasanton in Alameda County.

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husband a Demand for Tax Return asking that a return be filed by January 28, 2004, or an explanation be provided as to why none was required. When no response was received, respondent issued a Notice of Proposed Assessment (NPA) to appellant-husband on March 8, 2004, based on estimated income of $36,318. (Respondent's Opening Br. (ROB) p. 1 and exhibit B.) This NPA included $1,160.00 in tax, a late filing penalty of $290.00, a demand penalty of $301.75, a filing enforcement fee of $108.00, and applicable interest. Since no protest followed, the NPA became final on May 7, 2004. Respondent commenced collection action and imposed a collection fee of $101. Respondent collected and applied a payment of $1,976 for the 2002 year on November 8, 2004, and a payment of $8.19 on December 3, 2004.

Respondent obtained information that appellant-wife received income sufficient to prompt a filing for 2002. On January 12, 2004, respondent sent appellant-wife a Request for Tax Return asking that by February 11, 2004, she either file a return or indicate why none was required. When no response was received, respondent issued an NPA to appellant-wife on April 12, 2004, proposing tax of $6,822.00 (based on estimated income of $99,505.64), a late filing penalty of $1,705.50, and applicable interest. When no protest followed, the NPA became final on June 11, 2004. Respondent commenced collection action and imposed a collection fee of $101. Respondent collected and applied a payment in the amount of $9,409.18 to appellant-wife's account on March 24, 2005, and a payment of $9,459.29 on May 4, 2005. However, since the earlier payment satisfied the outstanding liability, respondent returned the May 4, 2009 payment to appellant-wife on January 22, 2007.

On or about June 2, 2008, appellants filed a tax return using the married filing joint status. The self-assessed tax on this return was zero, with claimed withholding credits in the amounts of $244. (ROB, exhibits E and F.) Respondent accepted the return as filed and credited appellants' 2002 account with the $244.00 credit and the payments totaling $11,393.96 that had been collected and applied to each appellant's separate accounts. Respondent abated the late filing penalties, collection fees assessed on each appellant and the demand penalty and filing enforcement fee assessed against appellant-husband, which in total resulted in an overpayment of $11,637 for 2002. Respondent then sent appellants a letter dated November 26, 2008, denying a refund of the overpayment

This timely appeal followed.

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Contentions

Appellants' Contentions

In appellants' appeal letter, apparently drafted directly by appellant-wife, appellant-wife indicated she was having personal issues (divorce) and that appellants' CPA had been injured in a car accident and could not follow through with completing the return. Appellant-wife indicated she believed this "was an active process and the statute would not apply." She also stated that "I did pay these penalties even though I truly believe that I was the innocent party who relied on [an] expert to advi[s]e me and to calculate my taxes when he recommended extension." She also indicated that she was struggling to make ends meet in these very difficult times.

In appellants' reply brief, subsequently drafted by appellants' tax representative, appellants argued: (1) the statute of limitations on refunds should be tolled due to appellant-wife's financial disability; (2) the statute of limitations should be suspended due to respondent's acknowledgement of overpayment and partial refund made January 22, 2007, (hereafter, appellants' overpayment acknowledgement contention); and (3) under the doctrine of equitable estoppel, respondent should be estopped from denying the matter was ongoing and therefore the statute of limitations should be tolled (hereafter, appellants' estoppel contention).

Appellants' Financial Disability Contention

Appellants explain appellant-wife first sought treatment for stress and depression in January 2000 brought on by the deterioration of her marriage. Her doctor prescribed Prozac and she was later treated by a psychiatrist who prescribed Prozac from July 2003 to March 2004. After a prolonged and stressful dissolution of marriage, appellant-wife sought to reassert control over her financial affairs by filing past tax returns for numerous years, including 2002. During this appeal, appellant-wife provided FTB Forms 1564 "Financially Disabled – Suspension of the Statute of Limitations." (Appellants Supplemental Information). In the first affidavit, signed September 30, 2009, the doctor (Dr. Amog) indicated that appellant-wife had been seen by Dr. Amog from November 2004 onward. This affidavit indicates that Dr. Amog could not comment on her mental status prior to November 2004 and that according to Dr. Amog's medical opinion, the impairment did not prevent appellant-wife from managing her affairs. (*See* Appellants' Reply Brief, exhibit 5, p. 2.)

Appellants subsequently presented a second affidavit signed by Dr. Inzarry M.D. on November 16, 2009, (hereafter, the Second Affidavit), whereby appellant-wife indicated she was financially disabled from August 27, 2000, to April 15, 2006. (*See* Appellants' Supplemental Information.) Dr. Inzarry described appellant-wife's medical impairment to be severe depression/anxiety symptoms including insomnia, nightmares, crying spells, poor concentration, low energy, social isolation and poor appetite. According to Dr. Inzarry, this medical impairment prevented appellant-wife from managing her financial affairs and that the period lasted from November 2002 through 2003 "(approximately)." (*Id.*)

Appellants' Overpayment Acknowledgement Contention

Appellants claim R&TC section 19306 explicitly excepts from the normal four-year and one-year statute of limitation requirements situations where the Franchise Tax Board allows a credit, or makes a refund before the expiration of those periods. Thus, appellants contend that since respondent made a refund for the 2002 tax year, refunding $9,459.29 on January 22, 2007, that respondent's action implied the 2002 tax year remained open for her to file a claim of refund. In other words, appellants claim the January 22, 2007 refund effectively tolled the statute of limitations. (Appellants' Reply Br. p. 4.)

Appellants' Estoppel Contention

Appellants claim the statute of limitations should be tolled because the May 4, 2005 payment was deemed an overpayment by respondent, it was not refunded until January 22, 2007. Appellants claim respondent was informed of an overpayment for the 2002 tax year and that during this time actively seized funds from appellant-wife's bank account. Since appellant-wife reasonably believed the matter was ongoing, the statute of limitations did not apply. Appellants, citing *Driscoll v. City of Los Angeles*, (1960) 67 Cal. 2d 297, claim that estoppel may be applied against the government where justice and right require it. Appellants claim that appellant-wife began to stabilize by November 2004 and because respondent did not refund appellant-wife's funds until January 22, 2007, appellant-wife reasonably believed the 2002 tax year was an ongoing matter.

Respondent's Contentions

Respondent contends appellants' refund claim is barred under R&TC section 19306

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because it was not filed within four years of the due date of the return, nor within one year from the date of overpayment. Respondent states that measured from the due date of April 15, 2003, the four-year statute expired on April 15, 2007. As for the one-year date from overpayment, respondent claims the only payments on the 2002 tax year were applied on November 8, 2004, through March 24, 2005, and that the June 2, 2008 refund claim was filed over a year after such payments were applied.

Respondent claims it has no duty to advise a taxpayer of the statute of limitations and that ignorance of the law does not excuse the failure to file a timely refund claim.

With respect to appellants' financial disability contention, respondent states that the Second Affidavit shows a disability date of November 2002 through 2003. Respondent claims that assuming this period extended through all of 2003, *i.e.*, through December 31, 2003, the total tolling period would be one year and one month. (Respondent's Reply Br., p. 2) Respondent claims that tolling the normal four-year limitations date, April 15, 2007, by one year and one month, would lead to a revised four-year limitations date of May 15, 2008. Respondent claims that tolling the normal one-year limitations date of March 24, 2006 (based on the last payment date of March 24, 2005) by an extra one year and one month would lead to a revised one year limitation date of April 24, 2008,[2] Respondent states that even with these revised dates, due to the tolling provisions of R&TC section 19316, the June 2, 2008 refund filing date was still untimely. Respondent also states that even if appellant-wife was able to invoke R&TC section 19316, she would only be entitled to a refund of 50 percent of her interest in any community property overpayment.

Appellants' Rebuttal

In response to respondent's tolling calculation, appellants claim that November 2002 to December 31, 2003, would include one year and two months (all of November and December in 2002 and all of 2003), and that this additional month would give appellants until June 15, 2008, to file a refund claim under the four-year statute of limitations (not respondent's calculation deadline of one year and one month to May 15, 2008.) Thus, appellants claim the June 2, 2008 refund claim was timely made within the tolling period allowed under R&TC section 19316. (Appellants' Additional Br., dated

[2] (Respondent's Reply Brief, p. 2.) Board staff notes that one year and one month beyond March 24, 2006 would be April 24, 2007.

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February 10, 2010, p. 1.)

Applicable Law

Under R&TC section 19306, a refund is permitted if made within either of the two following periods, whichever is later: (1) four years from when the return was timely filed or four years from the last day prescribed for filing the return (determined without regard to any extension of time for filing the return) (the four-year period); or (2) one year from the time of actual payment (the one-year period). Refunds can only be granted to the extent they fall within these statutory periods. (*Appeal of Robert A. and Nancy R. Jacobs*, 65-SBE-029, Aug. 3, 1965; *see also Prussner v. U.S.* (7th Cir. 1990) 896 F. 2d 218.)

The statute of limitations can be extended if the taxpayer can prove she was financially disabled, in that she was unable to manage her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be terminal or expected to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316; *Appeal of James C. and Florence Meeks*, 2006-SBE-001, Mar. 28, 2006.) A taxpayer will not be deemed financially disabled, if another person is legally authorized to act on behalf of the taxpayer in financial matters. (*Id.*, subd. (b)(2).)

This Board has held that the statute of limitations must be strictly construed, even where a taxpayer asserts that the doctrine of equitable estoppel should apply. (*Appeal of Jerold E. Wheat*, 83-SBE-150, June 21, 1983.) Equitable estoppel is applied against the government only in rare and unusual circumstances, when all of its elements are present, and its application is necessary to prevent manifest injustice. (*See Appeal of Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991.) The four elements of equitable estoppel are: (1) the government agency must be shown to have been aware of the actual facts; (2) the government agency must be shown to have made an incorrect or inaccurate representation to the relying party and intended that its incorrect or inaccurate representation would be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party must be shown to have been ignorant of the actual facts; and (4) the relying party must be shown to have detrimentally relied upon the representations or conduct of the government agency. (*Appeal of Western Colorprint*, 78-SBE-071, Aug. 15, 1978.) Where one of these elements is missing, there can be no estoppel. (*Hersch v. Citizens Savings & Loan*

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Assn. (1983) 146 Cal.App.3d 1002, 1011.) The burden of proving estoppel is on the party asserting estoppel. (*Appeal of Priscilla L. Campbell*, 79-SBE-035, Feb. 8, 1979.) The FTB is an administrative agency, and it does not have the legal authority to interpret a statute in such a way as to change its meaning or effect. (*Appeal of Melvin D. Collamore*, 72-SBE-031, Oct. 24, 1972.)

In Internal Revenue Service (IRS) Chief Counsel Advice (CCA) 200210015 (Nov. 26, 2001), in advice that specifically states that it should not be cited as precedent, the IRS concluded that for the federal financially disabled provisions under Internal Revenue Code (IRC) section 6511(h), that for taxpayers living in community property states (California in this specific CCA), half of the refund is allowable if only one of the spouses qualified as financially disabled. This CCA cited California Family Code section 760 and assumed the income at issue involved community income.

STAFF COMMENTS

Appellants' Tolling Arguments

It does not appear to Board staff that appellants are contesting that the June 2, 2008 filing of the 2002 return did not satisfy the normal (i.e., untolled) four-year or one-year periods. Thus, in order to prevail, it appears appellants must demonstrate that the statute of limitations should be tolled under either the financially disabled provisions of R&TC section 19316 or equitable estoppel.

1. Financially Disabled

At the oral hearing, the parties should be prepared to discuss the applicable tolling period, if any, created by the Second Affidavit. Board staff notes that after the introduction of the Second Affidavit, respondent contended (1) the four-year and one-year deadlines were still missed and (2) assuming the statute of limitations were allowed to be tolled, then respondent could only be allowed to refund 50 percent of any community property overpayment pursuant to the CCA cited above.

It appears to Board staff that the parties are disputing whether the relevant tolling period under R&TC section 19316 should be one year and one month (as calculated by respondent above, which appears to exclude the month of November 2002) or one year and two months (as calculated by appellant, which includes November 2002). Thus, at the oral hearing, the parties should be prepared to discuss which date in November 2002 the financially disabled tolling period began, since the Second Affidavit does not provide for a specific beginning tolling date within November 2002.

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If the Board determines that the financial tolling provisions apply and that the tolled four-year period was satisfied, then the Board would need to determine the amount of refund appellant-wife is entitled to. Therefore, the parties should be prepared to discuss what affect, if any, CCA 200210015 or the legal citations and reasoning discussed therein should have in determining the applicable refund amount in this appeal. In addition, appellant-wife should be prepared to demonstrate whether the income at issue for 2002 was from community property sources or separate income sources.[3] Both parties should also be prepared to discuss whether such a distinction should matter in determining this issue.

2. Equitable Estoppel

If the Board determines the financially disabled provisions do not apply, then it could move on to determine whether the statute of limitations should be tolled due to equitable estoppel. As noted above, since the burden of proof of demonstrating estoppel is on appellants, appellants should be prepared to demonstrate how the four elements of estoppel were established. Among other things, this would require appellants to identify: the specific facts realized by respondent regarding the first element discussed above and a showing of an inaccurate or incorrect representation by respondent, which respondent intended appellants to rely on. It does not appear to Board staff that this factual showing can be demonstrated by appellants simply claiming they were unaware of the law; rather, appellants must point to a specific representation of respondent that was inaccurate or incorrect and how respondent intended appellants to rely on such representation. If appellants are unable to satisfy all four elements of estoppel, the Board cannot toll the statute of limitations based on estoppel.

The Overpayment Acknowledgement Contention

It appears to Board staff that in addition to appellants' tolling contentions above, appellants are interpreting R&TC section 19306 to toll the statute of limitations when respondent timely allows a refund/credit (i.e., acknowledges an overpayment). Although not entirely clear, it appears to

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[3] Board staff notes appellants claim the income to appellant-wife was from the sale of her stock portfolio, since her husband did not work in 2002. (Appellants' Reply Br., p. 2.) Appellants should clarify this contention with respondent's contention that appellant-husband received a Form W-2 for wages for 2002 from Reyhill Drafting Service. (Respondent's Opening Br., p. 2, and exhibit D, p. 2.) Appellants should also be prepared to demonstrate that appellant-wife's stock portfolio income from 2002 constituted community property assets or separate property owned by appellant-wife.

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Board staff that appellants are reading the following language of R&TC section 19306 to reach this proposition: "No credit or refund shall be allowed…, unless before the expiration of that period [*i.e.*, the four-year or one-year period], the Franchise Tax Board allows a credit, makes a refund, or mails a notice of proposed overpayment…" Board staff believes appellants' logic is that since respondent *did* allow a refund/credit by acknowledging an overpayment, then a credit or refund can now be claimed by appellants after the four-year or one-year periods. It appears the implication of appellants' argument is that when a refund or partial refund is timely allowed by respondent, then the four-year statute or one-year statute no longer applies to the taxpayer (or is tolled in some manner). Accordingly, appellants should verify/clarify their legal interpretation and application of R&TC section 19306 to the facts of this appeal at the oral hearing; and if the foregoing fairly represents appellants' interpretation of R&TC section 19306, then appellants should explain when, if at all, the statute of limitations for refunds closed for 2002. Respondent should also be prepared to provide its alternative interpretation of R&TC section 19306.

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