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7 **BOARD OF EQUALIZATION**  
8 **STATE OF CALIFORNIA**  
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10 In the Matter of the Appeal of: ) **HEARING SUMMARY<sup>1</sup>**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **JAMES N. SMITH** ) Case No. 510914  
13

14 Year Claim  
1992 \$841.98  
15

16 Representing the Parties:

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18 For Appellant: Charles E. Smith, Jr., Attorney at Law  
19 For Franchise Tax Board: Jane Perez, Tax Counsel  
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21 **QUESTION:** Whether appellant filed his refund claim within the applicable statute of limitations.

22 HEARING SUMMARY

23 Background

24 Appellant did not file his California tax return for 1992, which was due on April 15,  
25 1993, until April 9, 2009. During 1994, the Franchise Tax Board (the FTB or respondent) received  
26 information that appellant earned sufficient income in 1992 to require him to file a tax return. When  
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28 <sup>1</sup> This appeal was deferred from the July 13, 2010 oral hearing calendar at the direction of this Board's Chairwoman.

1 appellant did not reply to respondent's demand that he file a return for 1992, respondent issued a Notice  
2 of Proposed Assessment (NPA) against him on February 22, 1994. Because appellant did not protest  
3 the NPA, it went final. Respondent indicates it thereafter issued a Notice of Action (NOA) affirming  
4 the NPA on May 20, 1994; however, this appears to be incorrect (respondent may wish to clarify this at  
5 the oral hearing). Respondent states that, under its normal collection practices, it would have then  
6 mailed various notices to appellant. After respondent received no replies from appellant with regard to  
7 those notices, respondent caused appellant's bank to remit to respondent \$878.48 on May 4, 1995.  
8 Respondent allegedly took no further action against appellant until he filed his tax return, even though  
9 appellant had a remaining unpaid tax liability for 1992.

10 As stated above, appellant filed his 1992 return on April 9, 2009. On the return, appellant  
11 reported taxable income of \$8,659, tax liability of \$66, withholding credits of \$160, and overpaid tax of  
12 \$94. Respondent accepted the return as filed and abated the underlying tax, late filing penalty, the post-  
13 amnesty penalty, and the filing enforcement cost recovery fee stated on the NPA. Respondent also  
14 reduced the demand penalty to \$16.50. The result of those adjustments was that appellant had a credit  
15 on his account for 1992 in the amount of \$841.98. Respondent treated appellant's 1992 return as a claim  
16 for refund of that amount. Respondent denied appellant's refund claim, and this timely appeal followed.

### 17 Contentions

18 Appellant contends that he is entitled to a refund of the amount at issue because "[t]he  
19 purported 'Nonrefundable amount' (\$841.98) was, and is, not the subject of any taxes due or payable  
20 resulting from taxable income." (App. Ltr.) Respondent contends that appellant's refund claim should  
21 be denied as untimely because his claim did not satisfy either the applicable four-year prong or the one-  
22 year prong of the statute of limitations under Revenue and Taxation Code (R&TC) section 19306.  
23 Respondent points out that the applicable four-year period under R&TC section 19306 for filing  
24 appellant's 1992 refund claim ended on April 15, 1997, while appellant did not file his refund claim for  
25 1992 until April 9, 2009. Respondent further points out that appellant's last payment for 1992 was made  
26 on May 4, 1995, and that appellant's one-year period for claiming a refund under R&TC 19306 ended  
27 on May 4, 1996. Respondent cites the *Appeal of Richard M. and Claire P. Hammerman* (83-SBE-260),  
28 decided by the Board on December 13, 1983, for the proposition that a taxpayer's failure, for whatever

1 reason, to file a claim for refund within the statutory period prevents the taxpayer from doing so at a  
2 later date.

3 Applicable Law

4 R&TC section 19306, subdivision (a), provides, in pertinent part, that no credit or refund  
5 shall be allowed or made after the later of four years from the last day prescribed for filing the return  
6 (determined without regard to any extension of time for filing the return) or after one year from the date  
7 of the overpayment, unless the taxpayer files a refund claim or respondent allows a credit, makes a  
8 refund, or mails a notice of overpayment on an appropriate form before the expiration of that period.<sup>2</sup>

9 STAFF COMMENTS

10 At the hearing, appellant should provide any facts or make any legal arguments that  
11 would show his refund claim should not be barred as untimely. Staff notes that, under R&TC section  
12 19316, subdivision (c), and the *Appeal of James C. and Florence Meek* (2006-SBE-001), decided by the  
13 Board on March 28, 2006, appellant would not be entitled to relief as a “financially disabled” taxpayer if  
14 his refund claim was barred as untimely under section 19306 because his refund claim would be barred  
15 before the enactment date of section 19316, September 23, 2002.

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26 <sup>2</sup> R&TC section 19306, subdivision (b), provides that “[t]he amendments to this section by the act adding this subdivision  
27 [Ch. 543 (S.B. 1185), Laws 2001] shall be applied to all claims and refunds, without regard to taxable year, for which the  
28 statute of limitations has not expired on the date that this act takes effect.” Staff notes that because the effective date of that  
act was January 1, 2002, and the statute of limitations for appellant’s refund claim for 1992 expired on April 15, 1997, the  
language “a period ending four years from the date the return was filed (if filed within the time prescribed by Section 18567  
or 18604, whichever is applicable),” in R&TC section 19306, subdivision (a), is not applicable here.