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BOARD OF EQUALIZATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:

ELAINE M. NICHOLS¹

) **HEARING SUMMARY**
)
) **HOMEOWNERS AND RENTERS**
) **PROPERTY TAX ASSISTANCE APPEAL**
)
) Case No. 458679
)

	<u>Year²</u>	<u>Claim</u> <u>Amount</u>
	2007	\$347.50

Representing the Parties:

For Appellant: W. James Hua, Tax Appeals Assistance Program³

For Franchise Tax Board: Lisa Lawson, Administrator II

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¹ Appellant resides in Los Angeles County, California.

² Appellant also filed appeals with the Board for tax years 2004, 2005, and 2006; those appeals were all filed on June 30, 2008, years later than the 90 days allowed for filing an appeal following respondent's denials of those claims. The Board accordingly lacks jurisdiction to consider appellant's claims for those years pursuant to California Code of Regulations, title 18, sections 5412, subdivision (a); 5422, subdivision (a)(11); and 5423, subdivision (d). The only provisions allowing for extension of the appeal filing deadlines are those for mailing, which add five to twenty days to the deadline for mailing, depending on the circumstances. (See Cal. Code Regs., tit. 18, § 5422, subd. (b).)

³ Appellant submitted the appeal letter. Lisa Barnett, from the Tax Appeals Assistance Program (TAAP), originally represented the taxpayer. Mark Shurtliff, also from TAAP, submitted appellant's reply briefs. W. James Hua from TAAP represents the taxpayer at the time this hearing summary was prepared.

- 1 QUESTIONS: (1) Whether respondent properly denied appellant’s 2007 claim for property tax
2 assistance.
3 (2) Whether appellant is entitled to renter assistance for 2007 under the doctrine of
4 collateral estoppel based on assistance granted for the 2003 claim year.

5 HEARING SUMMARY

6 Background

7 2003

8 Appellant filed a timely 2003 Renter Assistance Claim (Form 9000R or claim form). The
9 Franchise Tax Board (FTB or respondent) issued a notice that denied assistance because its exempt
10 property file indicated that appellant’s residence was exempt from property taxes in 2002. Appellant
11 filed a timely appeal. On appeal, the Board found that appellant had met her burden of proof showing
12 that she qualified for Homeowners and Renters Assistance for her 2003 claim.

13 2004, 2005, and 2006

14 Appellant filed timely 2004, 2005, and 2006 Renter Assistance Claims. Respondent
15 denied the 2004 claim on August 21, 2004; the 2005 claim on September 2, 2005; and the 2006 claim on
16 October 5, 2006, because appellant’s residence was allegedly exempt from property tax. Appellant filed
17 late appeals years later with the Board for the 2004, 2005, and 2006 claim years on June 30, 2008, which
18 were rejected. (See footnote two.)

19 2007

20 Appellant filed a timely 2007 Renter Assistance Claim. On the claim form, appellant
21 reported that she qualified for assistance because she was under the age of 62 and disabled on December
22 31, 2006. Appellant reported on the claim form that her total household income was \$8,076 in 2006 and
23 that she lived in a qualified residence in Santa Monica, California, for 12 months during 2006.

24 Respondent reviewed the claim form and denied assistance because appellant’s residence
25 was allegedly not subject to property tax. Appellant filed this timely appeal on June 30, 2008.

26 Contentions

27 On appeal, appellant asserts that she was unable to file her 2004, 2005, and 2006 appeals

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1 in a timely manner because of debilitating medical problems.⁴ (App. Reply Br., p. 1). Appellant further
2 argues that she is entitled to renter's assistance for the 2004, 2005, 2006, and 2007 claim years under the
3 doctrine of collateral estoppel, since the Board overturned respondent's denial and allowed appellant to
4 receive her assistance for the 2003 claim year on essentially the same facts and law involved in the
5 present appeal. (*Id.*, p. 2.)⁵

6 Respondent contends that the Board does not have jurisdiction regarding appellant's
7 appeal for the 2004, 2005, and 2006 claim years since appellant did not file timely appeals for these
8 claim years. For the 2007 claim year, respondent agrees that appellant met one of the criteria for
9 assistance because she was under the age of 62 and disabled on December 31, 2006. However,
10 respondent argues that appellant is not entitled to receive assistance because appellant lived at a property
11 not subject to tax in 2006 (the relevant year for a 2007 claim). Respondent states that it contacted the
12 Los Angeles County Tax Assessor's Office and was informed that the property was fully exempt from
13 tax in 2006. Respondent has provided a LexisNexis printout, which it contends shows that the property
14 receives a welfare exemption. (Resp. Opening Br., p. 4, exhibit C.)

15 Respondent also argues that collateral estoppel does not apply to this appeal for the 2007
16 claim since the facts of this case are different from those in appellant's appeal for the 2003 claim in that
17 appellant's residence was completely exempt from paying property taxes the entire 2006 calendar year.
18 (Resp. Reply Br., p. 2.) Finally, respondent insists that even if the Board determines that it has
19 jurisdiction over the 2004, 2005, and 2006 claims, assistance should be denied because appellant's
20 residence is not a qualified residence since it has been partially or fully exempt from paying property
21 taxes the entire period appellant has been living there. (Resp. Opening Br., p. 4.)

22 Applicable Law

23 Revenue and Taxation Code (R&TC) section 20541 permits certain renters of residential
24 dwellings to claim property tax assistance from the State of California; under R&TC section 20544 the

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26 ⁴ Appellant has also provided a letter from her psychotherapist, David Marsten, explaining some of her medical problems.
(App. Supp. Info.)

27 ⁵ In a footnote, appellant's representative admits that the only fact in the current appeal that is significantly different from the
28 2003 appeal is that the property in which the taxpayer lives is allegedly fully tax exempt in 2007; in contrast, appellant's
residence was partially exempt in 2003. (App. Reply Br., p. 2., fn. 1.)

1 amount of assistance is a specified percentage of \$250, determined according to the claimant's income.
2 The purpose of the HRA law is to provide assistance with the payment of property taxes. Consistent
3 with this purpose, a renter-claimant must live in a residence on which property taxes are paid, or on
4 which "substantially equivalent" payments are made in lieu of taxes. (Rev. & Tax. Code, § 20509.)
5 Payments in lieu of taxes must be at least 80 percent of the amount of taxes paid by a property of
6 comparable assessed value to be "substantially equivalent." (*Appeals of Helen Cantor, et al.*, 2002-
SBE-008, Nov. 13, 2002.)

7 The Board presumes respondent's denial of assistance was correct, and appellant has the
8 burden of proving error. (*Appeals of Jeremiah Xavier Spicer, et al.*, 2001-SBE-003, May 31, 2001.)
9 Further, the Board has held that each tax year must be examined individually and considered on its own
10 merits (see *Appeal of Duane H. Laude*, 76-SBE-096, Oct. 6, 1976); this rule applies to HRA appeals as
11 well (see *Appeals of Helen Cantor, et al.*, 2002-SBE-008, Nov. 13, 2002, at fn. 4).

12 Collateral Estoppel

13 The doctrine of collateral estoppel precludes a "party" from relitigating, in a trial on a
14 different cause of action, an issue necessarily decided in a previous case. (*Bernhard v. Bank of America*
15 (1942) 19 Cal.2d 807.) Although the doctrine of collateral estoppel does not apply in a second action to
16 issues that might have been raised but were not in the first action, collateral estoppel does apply to issues
17 that were raised, even though some factual matters or legal arguments related to those issues could have
18 been presented but were not. (*Bleek v. State Board of Optometry* (1971) 18 Cal.App.3d 415, 429
19 (citing 3 Witkin, Cal. Procedure, § 63, p. 1949).) The doctrine of collateral estoppel "is not an
20 inflexible, universally applicable principle; policy considerations may limit its use where the ...
21 underpinnings of the doctrine are outweighed by other factors." (*Vandenberg v. Superior Court* (1999)
22 21 Cal.4th 815, 829 [quoting *Jackson v. City of Sacramento* (1981) 117 Cal.App.3d 596, 603].) The
23 Board has declined to apply the doctrine of collateral estoppel where, in a subsequent appeal, the
24 appellant brought forth more evidence than that presented in the previous appeal. (*Appeal of Raymond*
25 *H. and Margaret R. Berner*, 2001-SBE-006A, Aug. 1, 2002.)

26 STAFF COMMENTS

27 It appears that appellant's residence during the entire 2006 calendar year, the applicable
28 year for determining appellant's eligibility for her 2007 claim, was completely exempt from property
taxes, so that appellant is not eligible for renter's assistance.

1 It is not clear why the Board allowed appellant’s 2003 claim in her prior appeal; however
2 staff notes that the facts of the 2003 appeal differed in that appellant’s residence for her 2007 claim was
3 entirely exempt from property tax. In addition, each tax year must be examined individually and
4 considered on its own merits, and it appears that respondent has shown here that appellant’s residence
5 was entirely tax exempt for 2006, so that she is not entitled to assistance on her 2007 claim. The parties
6 should be ready to address at the hearing whether collateral estoppel applies under these circumstances.

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