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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **ROGER ANDERSON AND**) Case No. 421282
13 **MAREN OLSON ANDERSON¹**)
14 _____)

<u>Years</u>	<u>Claim For Refund</u>
1997	\$1,040
1998	3,257
1999	2,210
2000	2,540
2001	2,495

20 Representing the Parties:

21 For Appellants: Jaclyn Appleby, Law Student³
22 For Franchise Tax Board: Suzanne L. Small, Tax Counsel III

23 QUESTION: Whether respondent's assessments are barred under the principles of equitable estoppel.

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25 ¹ Appellants reside in North Carolina.

26 ² This matter was rescheduled from February 25, 2009, at appellant's request, due to medical issues.

27 ³ Ms. Appleby represents appellants through the Tax Appeals Assistance Program (TAAP). She prepared appellants' reply
28 brief dated July 25, 2008. Another TAAP law student, Karen Walkenhorst, prepared appellants' reply brief dated May 5, 2008. Appellants filed their own appeal letter.

1 HEARING SUMMARY

2 Background

3 Respondent has no records, computer based or original paper copies, for original returns
4 filed by appellants for 1997 and 1998. Respondent states that any timely filed returns for 1997 and 1998
5 would have been destroyed and the computer records regarding those returns would have been deleted
6 by the time this appeal was filed. Appellants filed timely returns for 1999, 2000 and 2001.

7 Appellants filed amended returns for the years at issue on January 15, 2007. Each of the
8 amended returns was based on a ruling by the Los Angeles County Employees Retirement Association
9 (LACERA), reversing a previous position and holding that appellant-husband's disability payments
10 were premised on work related disability. The amended returns reduced appellants' gross income, based
11 on Internal Revenue Code (IRC) section 104(a), which exempts from gross income certain amounts
12 received as compensation for personal injuries or sickness.⁴ Appellant-husband suffered a heart attack
13 in 1996 after approximately 20 years of service with the Los Angeles County Sheriff's Department and
14 was forced into retirement. Respondent reviewed the amended returns and denied the claimed refunds
15 in a letter dated October 4, 2007. The FTB indicated that the amended returns were barred by the statute
16 of limitations. Appellants filed this appeal.

17 Contentions

18 On appeal, appellants state that they pursued an appeal of the LACERA determination for
19 about 10 years in order to establish that appellant-husband's disability retirement was service related
20 since 1997. They received the ruling in September 2006, which was retroactive to 1997. Previously,
21 appellants reported their income, which included the retirement benefits. Appellants assert that
22 respondent told them to report the retirement income on their returns and if the income was determined
23 to be service related, they could file amended returns. Appellants allege that the FTB failed to advise
24 appellants to file a protective claim for refund when appellants made full payment of taxes for the
25 appeal years, which would have tolled the statute of limitations. (Rev. & Tax. Code, § 19322.1.)
26 Appellants contend that the doctrine of equitable estoppel should apply to stop the FTB from asserting
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28 ⁴ California generally conforms to IRC section 104 pursuant to Revenue and Taxation Code (R&TC) section 17131.

1 the statute of limitations as a bar to the refund. As support, appellants submit a declaration, under
2 penalty of perjury, indicating that appellant-husband received the advice to report the disability
3 retirement as taxable income from an agent of the FTB.

4 Respondent contends that the statute of limitations bars appellants' claim for refund for
5 the appeal years; further, respondent argues that equitable estoppel, which if applied would stop it from
6 denying the refund claim, does not apply under the facts of this case. Respondent argues that the four
7 requirements for the application of equitable estoppel (which are set forth below, under Applicable Law)
8 are not met here. Respondent contends that appellants have not proven that they contacted respondent
9 or that they received erroneous advice from respondent. Respondent states that its records do not
10 indicate that appellants were given the advice that appellants allege was given. Respondent further
11 contends that reliance on informal opinions offered by respondent's employees is not sufficient to create
12 estoppel against respondent (citing *Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, decided May 4,
13 1976 and *Appeal of Mary M. Goforth*, 80-SBE-158, decided December 9, 1980).

14 Applicable Law

15 Statute of Limitations

16 The relevant statute of limitations (SOL) is set forth in R&TC section 19306. The statute
17 provides that the last day to file a claim for refund is the later of:

- 18 (1) four years from the date the return was filed, if filed within the extended due date
19 under R&TC section 18567;
- 20 (2) four years from the due date of the return, without regard to extensions;
- 21 (3) one year from the date of the overpayment.

22 The language of the SOL is explicit and does not provide exceptions. (*Appeal of Michael and Antha L.*
23 *Avril*, 78-SBE-072, Aug. 15, 1978.) Further, the SOL is "strictly construed and ... a taxpayer's failure
24 to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a
25 later date." (*Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.) Federal courts have
26 stated that fixed deadlines may appear harsh because they can be missed, but the resulting harshness is
27 redeemed by the clarity imparted. (*Prusser v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223
28 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

Equitable Estoppel

This Board has held that the SOL must be strictly construed, even where an appellant 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 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.)

STAFF COMMENTS

It appears undisputed that appellants' refund claims are barred by the statute of limitations, unless appellants can establish that the doctrine of equitable estoppel should apply. (See Rev. & Tax. Code, § 19306.) Appellants filed the amended returns more than four years after the last day for filing returns for the appeal years. Although the one-year limitations period would allow refunds of any payments made one year prior to the filing of the amended returns (i.e., on or after January 15, 2006); appellants' payments for the appeal years were made many years prior to January 15, 2006.

Appellants contend that they relied on oral advice provided by employees of respondent and therefore that the doctrine of equitable estoppel should apply. At the hearing, appellants will need to demonstrate that equitable estoppel should apply and that each of the four elements of equitable

1 estoppel have been met. In prior decisions, the Board has determined that allegations regarding oral
2 conversations with respondent's employees are not sufficient to demonstrate estoppel and, further, that a
3 taxing agency is not bound by informal opinions expressed by its own employees regarding taxability.

4 (*See Appeal of Western Colorprint, supra.*)

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