

1 Carl Bessent
2 Tax Counsel III
3 Board of Equalization, Appeals Division
4 450 N Street, MIC:85
5 PO Box 942879
6 Sacramento CA 95814
7 Tel: (916) 324-6592
8 Fax: (916) 324-2618

6 Attorney for the Appeals Division

7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **A.G. ARELLANO**¹) Case No. 436279
13 _____)

	<u>Years</u>	<u>Claim For Refund</u>
	1999	\$299.99
	2000	361.00
	2001	359.00

17 Representing the Parties:

18 For Appellant: Valerie Reyes, Law Student²

19 For Franchise Tax Board: L. Red Gobuty, Tax Counsel

20
21 **QUESTIONS:** (1) Whether appellant timely filed claims for refund for the appeal years.
22 (2) Whether the doctrine of equitable estoppel applies to allow appellant's claims for
23 refund.

24 ///

25 ///

26 _____
27 ¹ Appellant resides in Santa Clara County, California.

28 ² Ms. Reyes represents appellant through the Tax Appeals Assistance Program (TAAP).

1 HEARING SUMMARY

2 Background

3 1999

4 Appellant timely filed his original 1999 California tax return on January 15, 2000, on
5 which he reported California adjusted gross income (AGI) of \$33,997. With a personal exemption
6 credit of \$72 and estimated tax payments of \$2,180, appellant claimed an overpayment of \$1,031, which
7 was refunded by respondent Franchise Tax Board (FTB).

8 On April 15, 2000, appellant filed his first amended return for 1999, on which he reported
9 California AGI of \$34,032. Appellant calculated a tax balance due of \$8, which he remitted with the
10 amended return.

11 On April 3, 2007, appellant filed his second amended 1999 return. Appellant reported a
12 reduction in California AGI of \$3,826, which represented a mistaken inclusion of social security income
13 in the first 1999 amended return. Appellant claimed a refund. The FTB denied appellant's claim for
14 refund because it was filed beyond the statute of limitations period. Appellant filed this timely appeal.

15 2000

16 Appellant timely filed his 2000 California tax return on April 15, 2001. Appellant
17 reported California AGI of \$33,765. After applying a personal exemption credit of \$75 and estimated
18 payments of \$1,052, appellant reported an overpayment of tax of \$108, which he requested transferred
19 to the 2001 tax year.

20 On March 29, 2007, appellant filed an amended 2000 return on which he reported a
21 reduction in AGI of \$5,409. This reduction in AGI represented a mistaken inclusion of social security in
22 the AGI reported on the original return. Appellant claimed a refund. Again, the FTB denied the claim
23 for refund because it was filed beyond the statute of limitations. Appellant filed this timely appeal.

24 2001

25 Appellant timely filed his 2001 California return on April 15, 2002. Appellant reported
26 AGI of \$34,196. After applying a personal exemption credit of \$79 and estimated payments of \$825,
27 appellant reported a balance due of \$195. Appellant paid the \$195 balance due with the filing of the
28 return.

1 On April 3, 2007, appellant filed an amended 2001 return reporting a reduction in AGI of
2 \$5,727, which represented a mistaken inclusion of social security income in the AGI claimed on the
3 original 2001 return. Appellant claimed a refund. The FTB denied appellant's claim for refund,
4 indicating that it had been filed beyond the statute of limitations. This timely appeal followed.

5 Contentions

6 On appeal, appellant concedes that he misinterpreted the instructions for the social
7 security income adjustment to his California taxable income for the appeal years. Appellant asserts that
8 his refund claims should be allowed because he assumed his filings were correct and because the FTB
9 had a responsibility to review and correct his tax returns, but never informed him of the error. Appellant
10 contends that the doctrine of equitable estoppel should apply to allow the refund claims. Appellant
11 asserts that a taxpayer could be easily misled by the lack of clarity regarding social security benefits in
12 the forms and instructions provided by the FTB for the years at issue. Appellant asserts that the failure
13 of the FTB to adequately flag the non-taxability of social security benefits, in the instructions and forms
14 mailed to appellant, misled appellant into the mistaken belief that he should have included those benefits
15 in his California taxable income. Appellant argues that the appeals process should allow for equitable
16 remedies when fairness and probity warrant it.

17 Respondent contends that appellant has failed to show that timely claims for refund were
18 filed before the expiration of the statute of limitations. Respondent argues that there is no equitable
19 estoppel where appellant relied on allegedly ambiguous or incorrect instructions issued by respondent to
20 his detriment. Respondent asserts that it did not commit errors in processing appellant's returns.

21 Applicable Law

22 Statute of Limitations

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

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

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

8 Equitable Estoppel

9 This Board has held that the SOL must be strictly construed, even where an appellant
10 asserts that the doctrine of equitable estoppel should apply. (*Appeal of Jerold E. Wheat*, 83-SBE-150,
11 June 21, 1983.) Equitable estoppel is applied against the government only in rare and unusual
12 circumstances, when all of its elements are present, and its application is necessary to prevent manifest
13 injustice. (See *Appeal of Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991.) The four
14 elements of equitable estoppel are: (1) the government agency must be shown to have been aware of the
15 actual facts; (2) the government agency must be shown to have made an incorrect or inaccurate
16 representation to the relying party and intended that its incorrect or inaccurate representation would be
17 acted upon by the relying party or have acted in such a way that the relying party had a right to believe
18 that the representation was so intended; (3) the relying party must be shown to have been ignorant of the
19 actual facts; and (4) the relying party must be shown to have detrimentally relied upon the
20 representations or conduct of the government agency. (*Appeal of Western Colorprint*, 78-SBE-071,
21 Aug. 15, 1978.) Where one of these elements is missing, there can be no estoppel. (*Hersch v. Citizens*
22 *Savings & Loan Assn.* (1983) 146 Cal.App.3d 1002, 1011.) The burden of proving estoppel is on the
23 party asserting estoppel. (*Appeal of Priscilla L. Campbell*, 79-SBE-035, Feb. 8, 1979.) The FTB is an
24 administrative agency, and it does not have the legal authority to interpret a statute in such a way as to
25 change its meaning or effect. (*Appeal of Melvin D. Collamore*, 72-SBE-031, Oct. 24, 1972.)

26 STAFF COMMENTS

27 It appears undisputed that appellant’s refund claims are barred by the SOL, unless
28 appellant establishes that the doctrine of equitable estoppel should apply and that it should overcome the

1 statute of limitations. (See Rev. & Tax. Code, § 19306.) Appellant filed the amended returns more than
2 four years after the last day for filing returns for the appeal years. In addition, although the one-year
3 limitations period would allow refunds of any payments made one year prior to the filing of the
4 amended returns (i.e., on or after April 3, 2006 [for 1999 and 2001] and after March 29, 2006 [for
5 2000]), appellant did not make any payments on the years at issue within the one year SOL.

6 Appellant contends that he was misled by respondent's forms and instructions regarding
7 social security benefits and therefore the doctrine of equitable estoppel should apply. Staff notes that
8 this Board has held that when the FTB's tax instructions are claimed to be unclear or misleading,
9 taxpayers must follow the law, and not the instructions. (See *Appeal of Melvin D. Collamore, supra*;
10 *Appeal of Robert P. and Carolyn R. Schalk*, 76-SBE-072, June 22, 1976; *Transamerica Occidental Life*
11 *Ins. Co. v. State Bd. of Equal.* (1991) 232 Cal. App. 3d 1048, 1055; *Appeal of Priscilla L. Campbell*,
12 *supra*.) In addition, this Board has held that, absent direction from the Legislature, the statute of
13 limitations in R&TC section 19306 is not subject to equitable tolling. (*Appeal of James C. and Florence*
14 *Meek*, 2006-SBE-001, Mar. 28, 2006; *Appeal of Earl W. and Patricia A. McFeaters*, 94-SBE-012,
15 Nov. 30, 1994; see also *United States v. Brockamp* (1997) 519 U.S. 347.) At the hearing, appellant will
16 need to demonstrate that equitable estoppel should apply in light of the foregoing authorities and that
17 each of the four elements of equitable estoppel have been met.

18 ///

19 ///

20 ///

21 Arellano_cb