

1 William J. Stafford
Tax Counsel
2 Board of Equalization, Appeals Division
450 N Street, MIC:85
3 PO Box 942879
Sacramento CA 95814
4 Tel: (916) 324-2630
Fax: (916) 324-2618
5

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**

) **PERSONAL INCOME TAX APPEAL**

11
12 **JOHN D. BOGDANOFF AND**

) Case No. 440634

13 **JANORA G. BOGDANOFF¹**
14

	<u>Years</u>	<u>Claims For Refund Amounts</u>
	2000	\$15,617.34
	2001	\$13,612.08
	2002	\$ 9,853.07

18 Representing the Parties:

19 For Appellants: John D. Bogdanoff and Janora G. Bogdanoff

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

21
22 **QUESTION:** Whether the statute of limitations bars appellants' claims for refund for 2000, 2001, and
23 2002.

24 ///

25 ///

26 ///

27
28 ¹ Appellants reside in Fairfield, California.

1 HEARING SUMMARY2 Background

3 Appellants did not file timely personal income tax returns for three consecutive years,
4 2000-2002. For each of those years, respondent sent a “notice and demand” letter to the last known
5 address of appellants. Those letters were not returned by the postal service as undeliverable. When
6 appellants did not respond to the notice and demand letters, respondent issued Notices of Proposed
7 Assessment (NPA’s). Respondent proposed tax liabilities each year based on income reported on IRS
8 Forms 1099 for miscellaneous and dividend income paid to appellants. The 2000 and 2001 NPA’s also
9 proposed late filing penalties and accrued interest. The 2002 NPA proposed to impose the late filing
10 penalty, the notice and demand penalty, a filing enforcement fee, and accrued interest. Appellants did
11 not protest the NPA’s, and thus the assessments became final. Although respondent sent appellants an
12 invitation to participate in amnesty on January 10, 2005, appellants failed to apply for amnesty and to
13 pay the amounts that were due and payable for the 2000-2002 tax years prior to the amnesty period
14 ending on March 31, 2005. Thus, respondent imposed 50 percent interest-based amnesty penalties for
15 the 2000-2002 tax years.

16 Respondent pursued collection action and collected the amount due for each appeal year,
17 as described in the table below.

Year	Amount Collected	Period of Collection		Date Return/Claim Filed	Reported Tax Liability	Overpayment
		First Payment	Last Payment			
2000	\$ 15,617.34	5/31/2005	3/13/2006	10/24/07	\$ 0	\$ 15,617.34
2001	\$ 13,713.08	3/13/2006	3/13/2006	10/15/07	\$ 0	\$ 13,612.08 ²
2002	\$ 9,864.07	3/07/2006	3/13/2006	10/15/07	\$ 0	\$ 9,853.07
	\$39,194.49				\$ 0	\$ 39,082.49

24
25 ///

26
27
28 ² Respondent indicates it accepted appellant’s 2001 return and appellants had no tax liability: further it completely abated the late filing and amnesty penalties. Since respondent also indicates it imposed no fees for 2001, respondent should be prepared to discuss why appellant’s \$13,713.08 payment is reduced to \$13,612.08, as indicated in the account record for 2001. (See Resp. Op. Br., exhibit G, p. 1.)

Appeal of John D. and Janora G. Bogdanoff

NOT TO BE CITED AS PRECEDENT - Document prepared for Board review. It does not represent the Board’s decision or opinion.

1 On or about October 15, 2007, respondent received appellants' 2001 and 2002 income
2 tax returns, and on or about October 24, 2007, respondent received appellants' 2000 income tax return.
3 Each of the returns reported a self-assessed tax liability of \$0. Respondent accepted each of appellants'
4 self-assessed tax liabilities³ and treated the returns as claims for refund. Respondent denied all of the
5 refund claims because each of the claims was filed beyond the applicable statute of limitations.
6 Appellants then filed this timely appeal.

7 Contentions

8 Appellants contend that personal and medical problems arose over the years that caused
9 them to be unable to file their tax returns. Appellants cite to Mrs. Bogdanoff's difficult birth of their
10 daughter in 1993, complications from that birth, and Mrs. Bogdanoff's bouts with depression and
11 diabetes. Appellants also state that their daughter was diagnosed as developmentally delayed, obsessive
12 compulsive, and oppositional defiant. Appellants further state that their daughter became violent to the
13 point where appellants had to place their daughter in a group home four years ago (at approximately 11
14 years of age). Appellants also assert that Mrs. Bogdanoff is unable to get her medical records to
15 demonstrate her financial disability because they lost their medical insurance coverage following the
16 loss of Mr. Bogdanoff's primary account (Home Depot) in January of 2007. Appellants further contend
17 that they have also lost their home to foreclosure. Appellants appear to argue that the statute of
18 limitations may be tolled here due to Mrs. Bogdanoff's health issues. Appellants further assert that
19 respondent should have notified them regarding the statute of limitations before it expired.

20 Respondent contends that the statute of limitations bars appellants' refund claims and that
21 respondent is not required to advise appellants of the statute of limitations periods. Respondent
22 provided appellants with information on tolling the statute of limitations due to financial disability and
23 the Form 1564 for appellants to complete to demonstrate financial disability.⁴ Respondent notes that
24 appellants have not yet returned the form or provided evidence of financial disability.

25 ///

26 _____
27 ³ Respondent accordingly abated all of the penalties and fees it had imposed, as well as accrued interest.

28 ⁴ (Resp. Op. Br., exhibit N, p. 4.)

1 Applicable Law

2 *Statute of Limitations*

3 The general statute of limitations for filing a refund claim is set forth in Revenue and
4 Taxation Code (R&TC) section 19306. Under that section, the last day to file a claim for refund is the
5 later of:

- 6 1. Four years from the date the return was filed, if filed within the extended due date;
7 2. Four years from the due date of the return, without regard to extensions; or
8 3. One year from the date of the overpayment.

9 The language of the statute of limitations is explicit and must be strictly construed.
10 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.)⁵ The statute of limitations is
11 “strictly construed and . . . a taxpayer’s failure to file a claim for refund, for whatever reason, within the
12 statutory period bars him from doing so at a later date.” (*Appeal of Earl and Marion Matthiessen*, 85-
13 SBE-077, July 30, 1985.) It is a taxpayer’s responsibility to file a claim for refund within the timeframe
14 prescribed by law. (*Appeal of Earl and Marion Matthiessen, supra.*) Federal courts have stated that
15 fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is
16 redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896
17 F.2d 218, 222-223 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469
18 U.S. 241, 249].)

19 R&TC section 19316 contains the only exception to the statute of limitations under
20 California law. R&TC section 19316 tolls the statute of limitations during a period of “financial
21 disability,” meaning the taxpayer was unable to manage his or her financial affairs due to a medically
22 determinable physical or mental impairment that is expected to be a terminal impairment or is expected
23 to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd. (b)(1).)
24 In order to demonstrate the existence of a financial disability, a taxpayer must submit a signed affidavit
25 from a physician that explains the nature and duration of the taxpayer’s physical or mental impairments.
26 (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In addition, the taxpayer must
27 show that he or she satisfies the strict definition of “financial disability” such that the taxpayer could not

28 ⁵ Board of Equalization cases are generally available for viewing on our website (www.boe.ca.gov).

1 manage his or her financial affairs; it is not sufficient to show that the taxpayer could not engage in a
2 regular occupation. (*Ibid.*) Because appellants are spouses who filed a joint return, they must show that
3 they both suffered from a “financial disability.” (Rev. & Tax. Code, § 19316, subd. (b)(2).)

4 Respondent’s determination of tax is presumed to be correct, and a taxpayer has the
5 burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,
6 2001-SBE-001, May 31, 2001.)

7 STAFF COMMENTS

8 It is appellants’ responsibility to file a claim for refund within the timeframe prescribed
9 by law. (*Appeal of Earl and Marion Matthiessen, supra.*) Here, appellants did not timely file their
10 returns within the extended filing deadlines, thus their claims for refund must have been filed within
11 four years from the due dates of those returns (without regard to extensions), or one year from the date
12 of overpayment, whichever period expired later. What follows is a discussion of the four-year and one-
13 year claims periods for each of the three years on appeal.

14 **2000** – Appellants’ 2000 return was due on April 15, 2001. Four years from that date was April
15 15, 2005. Therefore, appellants’ claim for refund (the 2000 return), filed on October 24, 2007, is barred
16 under the four-year statute of limitations. Appellants made their last payment on March 13, 2006. One
17 year from that date was March 13, 2007. Therefore, appellants’ claim for refund is also barred under the
18 one-year statute of limitations.

19 **2001** – Appellants’ 2001 return was due on April 15, 2002. Four years from that date was April
20 15, 2006. Therefore, appellants’ claim for refund (the 2001 return), filed on October 15, 2007, is barred
21 under the four-year statute of limitations. Appellants made their last payment on March 13, 2006. One
22 year from that date was March 13, 2007. Therefore, appellants’ claim for refund is also barred under the
23 one-year statute of limitations.

24 **2002** – Appellants’ 2002 return was due on April 15, 2003. Four years from that date was April
25 15, 2007. Therefore, appellants’ claim for refund (the 2002 return), filed on October 15, 2007, is barred
26 under the four-year statute of limitations. Appellants made their last payment on March 13, 2006. One
27 year from that date was March 13, 2007. Therefore, appellants’ claim for refund is also barred under the
28 one-year statute of limitations.

1 As stated above, R&TC section 19316 tolls the statute of limitations during a period of
2 “financial disability,” meaning the taxpayer was unable to manage his or her financial affairs due to a
3 medically determinable physical or mental impairment that is expected to be a terminal impairment or is
4 expected to last for a continuous period of not less than 12 months. (Rev. & Tax. Code, § 19316, subd.
5 (b)(1).) Because appellants are spouses who filed a joint return, they must show that they both suffered
6 from a “financial disability.” (Rev. & Tax. Code, § 19316, subd. (b)(2).) Appellants should be
7 prepared to demonstrate that they are entitled to tolling of the statute of limitations under section 19316
8 and should provide any supporting evidence in that regard, including signed affidavits from a physician
9 that explain the nature and duration of their physical or mental impairments. (*Appeal of James C. and*
10 *Florence Meek , supra.*) Appellants should specify the time periods that each qualifies as “financially
11 disabled.” Pursuant to California Code of Regulations, title 18, section 5523.6, appellants should
12 provide their evidence to the Board Proceedings Division at least 14 days prior to the oral hearing.⁶

13 ///
14 ///
15 ///

16 Bogdanoff_wjs

17
18
19
20
21
22
23
24
25
26
27

28 ⁶ Evidence exhibits should be sent to: Mira Tonis, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879, Sacramento, California, 94279-0081.