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**BOARD OF EQUALIZATION**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | **HEARING SUMMARY** |
| | **PERSONAL INCOME TAX APPEAL** |
| **CASEY MILLER**[1] | Case No. 378796 |

| Years | Claim For Refund |
|---|---|
| 1998 | $6,649.49[2] |
| 1999 | $17.00 |
| 2000 | $53.00 |
| 2001 | $46.00 |

Representing the Parties:

For Appellant: Gilbert Yabes, Tax Appeals Assistance Program

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

QUESTION: Whether appellant's claims for refund are barred by the statute of limitations.

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[1] Appellant resides in Anaheim, Orange County, California.

[2] This amount is based on respondent's letter denying appellant's refund claim for 1998, which is attached to appellant's appeal letter. Respondent's brief shows an amount of $6,694.49, which presumably reflects a typographical error.



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HEARING SUMMARY

Background

1998

For 1998, respondent received information that appellant had received sufficient income during the 1998 taxable year to require that he file a 1998 return.[3] When respondent did not receive a 1998 return, respondent mailed appellant a Request for Tax Return ("Request") on December 13, 1999. (Resp. Reply Br., p. 1.) The Request asked that, within 30 days, appellant file a 1998 return, provide a copy if a return had already been filed, or explain in writing why there was no obligation to file a return. The Request was mailed to appellant's last known address. (Resp. Reply Br., exhibits A & B.)[4]

Since respondent did not receive a response to the Request, respondent issued a Notice of Proposed Assessment (NPA) on February 24, 2000. (Resp. Reply Br., exhibit C.) The NPA reflected a total income amount of $60,831, based upon $45,748 in estimated business income based on appellant's license issued by the State Department of Insurance, $7,095 in wages paid by Fullerton Elementary School District, and $7,988 in miscellaneous income payments. (*Id.*) Respondent proposed a tax liability of $3,596, after allowing appellant a personal exemption in the amount of $70 and withholding credits in the amount of $97. Respondent also assessed a late filing penalty of $899.00, a failure to file on demand penalty of $923.25, and a filing enforcement fee of $69.00, plus interest. (*Id.*) Appellant failed to respond to the NPA and the assessment became final. (Resp. Reply Br., p. 2.)

Respondent states that it forwarded a Statement of Tax Due (STD) to appellant's last known address on May 16, 2000. When appellant failed to respond, respondent initiated collection action. Based on an Order to Withhold (OTW) issued by respondent, payments in the amount of

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[3] Appellant received wage information indicating that appellant received wages in the amount of $7,095 from Fullerton Elementary School District. In addition, respondent received information from the State Department of Insurance indicating that appellant was a license holder. Income in the amount of $45,748 was ascribed to appellant's occupational license using an industry-wide average. (Resp. Reply Br., exhibit A.) Additionally, two miscellaneous payments were made to appellant: $4,989 from Charles Schwab and Company, Inc. and $2,999 from First Union National Bank.

[4] Respondent's computer records indicate that the letter was sent to appellant's last known address and was not returned as undeliverable by the U.S. Postal Service. (Resp. Reply Br., exhibit A.).



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$6,597.49[5] were collected and applied to appellant's 1998 tax year account between April 2, 2001 and May 15, 2002. (*Id.*)

On July 13, 2006, appellant filed a tax return, reporting $7,095 in wages, federal adjusted gross income (AGI) of $13,174, and taxable income of $10,532.[6] The return self-assessed tax in the amount of $164 and, as a result of the application of withholding credits and exemptions, requested a refund in the amount of $5,828. (Resp. Reply Br., exhibit E.) After receiving the return, respondent made adjustments to the 1998 account resulting in zero tax liability and adjusting the penalty for failure to file from $923.25 to $41.00 and the late filing penalty from $899.00 to $67.00. (Resp. Reply Br., exhibit D, lines 17 & 18.)

Based on the NPA, respondent had collected more money toward appellant's 1998 account than was needed to cover the self-assessed tax liability reported when appellant subsequently filed his tax return. Respondent did not issue a refund or credit to appellant because respondent calculated that the return was filed more than four years after the original due date for the 1998 return. (Resp. Reply Br., p. 3.) This timely appeal followed.

1999

Appellant did not file a timely return for 1999. Respondent received appellant's 1999 California Income Tax Return on July 13, 2006. Appellant reported wages in the amount of $5,725, federal AGI of $8,190, and taxable income of $5,479. The return also reported $0 in self-assessed tax and withholding credits of $17.00. The return requested a refund of $17. (Resp. Reply Br., exhibit F.) Respondent did not refund this amount to appellant because it calculated that the credit was barred by the statute of limitations. This timely appeal followed.

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[5] The amount does not appear to be in dispute, however respondent's exhibit D does not clearly provide information to account for the amount given. (Resp. Reply Br., exhibit D, lines 3 through 16.) At the hearing, respondent should be prepared to clarify the record. Staff notes that the timing of amounts of collected could be relevant, if any amounts were collected within one year of July 13, 2006, which was the date of appellant's refund claims. However, respondent asserts that no payments were collected within the year preceding July 13, 2006.

[6] Appellant's returns were signed and dated on June 27, 2006.



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2000

On July 13, 2006, appellant filed a tax return for 2000, reporting wages in the amount of $11,650, federal AGI of $11,720, and taxable income of $8,909. The return also reported $48 in self-assessed tax and withholding credits of $101. The return requested a refund of $53. (Resp. Reply Br., exhibit G.) Respondent did not refund this amount to appellant because it calculated that the credit was barred by the statute of limitations. This timely appeal followed.

2001

Also on July 13, 2006, appellant filed a tax return for 2001, reporting wages in the amount of $11,639, federal AGI of $11,643, and taxable income of $8,683. The return also reported $38 in self-assessed tax and withholding credits of $84. The return requested a refund of $46. (Resp. Reply Br., exhibit H.) Respondent did not refund this amount to appellant because it calculated that the credit was barred by the statute of limitations. This timely appeal followed.

Contentions

Appellant contends that he began suffering from back pain during the 1990's, which he states continues through the present. (App. Op. Br., p. 1.) Appellant states that he had treatment from many doctors and went through a divorce during this time. Appellant further contends that he pursued a career in insurance sales in the late 1990's but found it was not right for him and then started teaching school. He then learned his wages were being garnished due to perceived income that would be realized based on his license from the Department of Insurance even though he was not earning any money using that license. Appellant claims that he thought he would get the garnished money back when he filed a tax return. He requests that the overpayments be refunded to him as he never earned any money using the license from the Department of Insurance nor did he ever renew that license.

Respondent contends that the 1998, 1999, 2000, and 2001 tax returns were due, respectively, on April 15, 1999, April 15, 2000, April 15, 2001, and April 15, 2002, but were not filed until July 13, 2006, which was after the four year statute of limitations period expired.[7] (Resp. Reply Br., p. 5 & 6.) Respondent further contends that the latest payments made to appellant's 1999, 2000,

[7] The expiration dates are April 15, 2003, April 15, 2004, April 15, 2005, and April 15, 2006.



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and 2001 accounts were withholding payments which are deemed to have been paid on the last day prescribed for filing the return, which was, with respect to each year, more than a year prior to July 13, 2006 (the date of appellant's refund claim).[8] With regard to 1998, respondent indicates that the last payments received were collected on May 15, 2002, which was more than a year prior to July 13, 2006 (the date of appellant's refund claim). Thus, respondent contends appellant also failed to meet the one-year statute of limitations. (*Id.*)

Applicable Law

Statute of Limitations

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

1. four years from the date the return was filed, if filed within the extended due date under R&TC section 18567;
2. four years from the due date of the original return, without regard to extensions; or
3. one year from the date of the overpayment, whichever period expires later.

The language of the statute of limitations is explicit and does not provide exceptions. (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) The Board further held that the statute of limitations is "strictly construed and that a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date." (*Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.). Federal courts have stated that fixed deadlines may appear harsh because they can be missed, but the resulting harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 (quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249.).) The Board has held that respondent has no duty to discover overpayments by taxpayers (*Appeal of Manuel and Ofelia C. Cervantes*, 74-SBE-029, Aug. 1, l974); nor does respondent have a duty to inform taxpayers of the time within which a claim for refund must be filed in order to avoid application of the statute of limitations. (*Appeal of Earl and Marion Matthiessen*, *supra*.)

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[8] Respondent notes that appellant is deemed to have made payments on his withholding credits for 1999, 2000, and 2001, respectively, on April 15, 2000, April 15, 2001, and April 15, 2002. (Resp. Reply Br., p. 5 & 6.)



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Equitable Tolling

This Board has consistently held that the statute of limitations on claims for refund is explicit and must be strictly construed, without exception. (*Appeal of Michael and Antha L. Avril, supra*; *Appeal of Earl and Marion Matthiessen, supra*; *Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) The Board has also considered the doctrine of equitable tolling and held that, absent direction from the Legislature, the statute of limitations in R&TC section 19306 is not subject to equitable tolling. (*Appeal of James C. and Florence Meek, supra*, *Appeal of Earl W. and Patricia A. McFeaters*, 94-SBE-012, Nov. 30, 1994; see also *United States v. Brockamp* (1997) 519 U.S. 347.)

Financial Disability

R&TC section 19316 tolls the statute of limitations during a period of "financial disability," meaning the time period during which the taxpayer was unable to manage his or her financial affairs due to medically determinable physical or mental impairments. (Rev. & Tax. Code, § 19316, subds. (a) & (b).) In order to demonstrate the existence of a financial disability, appellants must submit a signed affidavit from a physician that explains the nature and duration of their physical or mental impairments. (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In addition, an appellant must show that he satisfies the strict definition of "financial disability" such that he could not manage his financial affairs. (*Id.*) It is not sufficient to show that an appellant could not engage in a regular occupation or that he was "disabled" under other statutory definitions of disability. (*Id.*) The taxpayer must show that the period of financial disability overlaps with the relevant limitations period. (*Id.*) An individual taxpayer will not meet the provisions of R&TC section 19316 if, for any period, the individual's spouse, or any other person, is legally authorized to act on the individual's behalf in financial matters.

STAFF COMMENTS

With respect to the 1998, 1999, 2000, 2001 claims for refund, there does not appear to be any disagreement that the returns and claims for refund were untimely. For all claims, appellant asks this Board to consider the extenuating circumstances in his life that prevented him in filing timely returns, the harm caused to him by respondent's refusal to grant the claim for refund, and that the Board consider respondent's duty to inform taxpayers when the statute of limitations is going to expire. Staff

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notes that, as discussed in Applicable Law, this Board has held that the statute of limitations is not subject to equitable tolling.

Staff notes, however, that appellant stated in his appeal that he suffers from chronic back problems. Appellant did not provide any detail regarding his illnesses, such as when his illness began, its severity, and whether it impeded his ability to manage financial affairs. If appellant's illnesses was of such a severity that they he was prevented from managing his financial affairs, appellant may wish to consider providing an affidavit from his doctor explaining the nature, severity and timing of his illness. Appellant would need to show that he met the requirements for financial disability for the relevant time period.

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