

1 Blake Blackwell  
Legal Intern  
2 Grant S. Thompson  
Acting Supervising Tax Counsel  
3 Board of Equalization, Appeals Division  
450 N Street, MIC:85  
4 PO Box 942879  
Sacramento CA 95814  
5 Tel: (916) 322-2167  
6 Fax: (916) 324-2618

7 Attorney for the Appeals Division

8 **BOARD OF EQUALIZATION**  
9 **STATE OF CALIFORNIA**

11 In the Matter of the Appeal of: ) **HEARING SUMMARY<sup>2</sup>**  
12 ) **PERSONAL INCOME TAX APPEAL**  
13 **CASEY MILLER<sup>1</sup>** ) Case No. 378796

---

	<u>Years</u>	<u>Claim For Refund</u>
	1998	\$6,694.49 <sup>3</sup>
	1999	\$17.00
	2000	\$53.00
	2001	\$46.00

19 Representing the Parties:

20 For Appellant: Gilbert Yabes, Tax Appeals Assistance Program

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

24 <sup>1</sup> Appellant resides in Orange County, California.

25 <sup>2</sup> At the request of appellant, this hearing was postponed from the November 12, 2008 calendar to the February 25, 2009  
26 calendar. It was then postponed to the April 28, 2009 calendar. This hearing summary reflects only minor changes from the  
hearing summary distributed for the February 25, 2009 calendar.

27 <sup>3</sup> This is the amount on appeal set forth in the FTB's February 17, 2009 exhibit, which clarifies the record with regard to this  
28 amount and the dates and amounts of appellant's payments. (Some of the record in the appeal reflects an amount of  
\$6,649.49, which apparently reflects a typographical error.)

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

2 HEARING SUMMARY

3 Background

4 1998

5 For 1998, respondent received information that appellant had received sufficient income  
6 during the 1998 taxable year to require that he file a 1998 return.<sup>4</sup> When respondent did not receive a  
7 1998 return, respondent mailed appellant a Request for Tax Return ("Request") on December 13, 1999.  
8 (Resp. Reply Br., p. 1.) The Request asked that, within 30 days, appellant file a 1998 return, provide a  
9 copy if a return had already been filed, or explain in writing why there was no obligation to file a return.  
10 The Request was mailed to appellant's last known address. (Resp. Reply Br., exhibits A & B.)<sup>5</sup>

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

20 Respondent states that it forwarded a Statement of Tax Due (STD) to appellant's last  
21 known address on May 16, 2000. When appellant failed to respond, respondent initiated collection  
22 action. Based on an Order to Withhold (OTW) issued by respondent, payments in the amount of  
23 \$6,597.49 were collected and applied to appellant's 1998 tax year account between April 2, 2001 and  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Appellant received wage information indicating that appellant received wages in the amount of \$7,095 from Fullerton  
27 Elementary School District. In addition, respondent received information from the State Department of Insurance indicating  
28 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.

<sup>5</sup> 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.)

1 May 15, 2002.<sup>6</sup> (*Id.*)

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

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

14 1999

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

21 2000

22 On July 13, 2006, appellant filed a tax return for 2000, reporting wages in the amount of  
23 \$11,650, federal AGI of \$11,720, and taxable income of \$8,909. The return also reported \$48 in self-  
24 assessed tax and withholding credits of \$101. The return requested a refund of \$53. (Resp. Reply Br.,  
25 exhibit G.) Respondent did not refund this amount to appellant because it calculated that the credit was  
26

27 <sup>6</sup> Respondent's February 17, 2009 exhibit provides its record of the dates and amounts of appellant's payments.

28 <sup>7</sup> Appellant's returns were signed and dated on June 27, 2006.

1 barred by the statute of limitations. This timely appeal followed.

2 2001

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

8 Contentions

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

18 Respondent contends that the 1998, 1999, 2000, and 2001 tax returns were due,  
19 respectively, on April 15, 1999, April 15, 2000, April 15, 2001, and April 15, 2002, but were not filed  
20 until July 13, 2006, which was after the four year statute of limitations period expired.<sup>8</sup> (Resp. Reply  
21 Br., p. 5 & 6.) Respondent further contends that the latest payments made to appellant's 1999, 2000,  
22 and 2001 accounts were withholding payments which are deemed to have been paid on the last day  
23 prescribed for filing the return, which was, with respect to each year, more than a year prior to July 13,  
24 2006 (the date of appellant's refund claim).<sup>9</sup> With regard to 1998, respondent indicates that the last  
25 payments received were collected on May 15, 2002, which was more than a year prior to July 13, 2006  
26

27 <sup>8</sup> The expiration dates are April 15, 2003, April 15, 2004, April 15, 2005, and April 15, 2006.

28 <sup>9</sup> 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.)

1 (the date of appellant's refund claim). Thus, respondent contends appellant also failed to meet the one-  
2 year statute of limitations. (*Id.*)

### 3 Applicable Law

#### 4 Statute of Limitations

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

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

11 The language of the statute of limitations is explicit and does not provide exceptions. (*Appeal of*  
12 *Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) The Board further held that the statute of  
13 limitations is "strictly construed and that a taxpayer's failure to file a claim for refund, for whatever  
14 reason, within the statutory period bars him from doing so at a later date." (*Appeal of Earl and Marion*  
15 *Matthiessen*, 85-SBE-077, July 30, 1985.). Federal courts have stated that fixed deadlines may appear  
16 harsh because they can be missed, but the resulting harshness is redeemed by the clarity imparted.  
17 (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 (quoting *United States v. Locke* (1985)  
18 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249.)) The Board has held that respondent  
19 has no duty to discover overpayments by taxpayers (*Appeal of Manuel and Ofelia C. Cervantes*, 74-  
20 SBE-029, Aug. 1, 1974); nor does respondent have a duty to inform taxpayers of the time within which a  
21 claim for refund must be filed in order to avoid application of the statute of limitations. (*Appeal of Earl*  
22 *and Marion Matthiessen, supra.*)

#### 23 Equitable Tolling

24 This Board has consistently held that the statute of limitations on claims for refund is  
25 explicit and must be strictly construed, without exception. (*Appeal of Michael and Antha L. Avril,*  
26 *supra; Appeal of Earl and Marion Matthiessen, supra; Appeal of James C. and Florence Meek*, 2006-  
27 SBE-001, Mar. 28, 2006.) The Board has also considered the doctrine of equitable tolling and held that,  
28 absent direction from the Legislature, the statute of limitations in R&TC section 19306 is not subject to

1 equitable tolling. (*Appeal of James C. and Florence Meek, supra, Appeal of Earl W. and Patricia A.*  
2 *McFeaters*, 94-SBE-012, Nov. 30, 1994; see also *United States v. Brockamp* (1997) 519 U.S. 347.)

### 3 Financial Disability

4 R&TC section 19316 tolls the statute of limitations during a period of “financial  
5 disability,” meaning the time period during which the taxpayer was unable to manage his or her  
6 financial affairs due to medically determinable physical or mental impairments. (Rev. & Tax. Code,  
7 § 19316, subs. (a) & (b).) In order to demonstrate the existence of a financial disability, appellants  
8 must submit a signed affidavit from a physician that explains the nature and duration of their physical or  
9 mental impairments. (*Appeal of James C. and Florence Meek, supra.*) In addition, an appellant must  
10 show that he satisfies the strict definition of “financial disability” such that he could not manage his  
11 financial affairs. (*Id.*) It is not sufficient to show that an appellant could not engage in a regular  
12 occupation or that he was “disabled” under other statutory definitions of disability. (*Id.*) The taxpayer  
13 must show that the period of financial disability overlaps with the relevant limitations period. (*Id.*) An  
14 individual taxpayer will not meet the provisions of R&TC section 19316 if, for any period, the  
15 individual’s spouse, or any other person, is legally authorized to act on the individual’s behalf in  
16 financial matters.

### 17 STAFF COMMENTS

18 With respect to the 1998, 1999, 2000, 2001 claims for refund, there does not appear to be  
19 any disagreement that the returns and claims for refund were untimely. For all claims, appellant asks  
20 this Board to consider the extenuating circumstances in his life that prevented him in filing timely  
21 returns, the harm caused to him by respondent’s refusal to grant the claim for refund, and that the Board  
22 consider respondent’s duty to inform taxpayers when the statute of limitations is going to expire. Staff  
23 notes that, as discussed in Applicable Law, this Board has held that the statute of limitations is not  
24 subject to equitable tolling.

25 Staff notes, however, that appellant stated in his appeal that he suffers from chronic back  
26 problems. Appellant did not provide any detail regarding his illnesses, such as when his illness began,  
27 its severity, and whether it impeded his ability to manage financial affairs. If appellant’s illnesses was  
28 of such a severity that they he was prevented from managing his financial affairs, appellant may wish to

1 consider providing an affidavit from his doctor explaining the nature, severity and timing of his illness.  
2 Appellant would need to show that he met the requirements for financial disability for the relevant time  
3 period.

4 ///

5 ///

6 ///

7 Miller\_bcb

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28