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BOARD OF EQUALIZATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:) **HEARING SUMMARY**
) **PERSONAL INCOME TAX APPEAL**
) **DONALD A. RAMIREZ AND** Case No. 360881
) **CAROLINE A. RAMIREZ¹**

| | <u>Years</u> | <u>Claims For Refund</u> |
|--|--------------|--------------------------|
| | 1997 | \$9,551.13 |
| | 1998 | \$9,172.46 |
| | 1999 | \$203.00 |

Representing the Parties:

For Appellants: Matthew J. Staub, TAAP²
For Franchise Tax Board: Suzanne L. Small, Tax Counsel III

QUESTION: (1) Whether appellants' claims for refund are barred by the statute of limitations.³

¹ Appellants reside in El Dorado County, California.

² Appellants submitted the appeal letter. R. Brooks Whitehead, a member of the Tax Appeals Assistance Program (TAAP), submitted appellant's reply brief. Matthew J. Staub, another member of TAAP, submitted appellant's supplemental brief.

³ This appeal involves a 1997 joint return appellants filed and 1997 and 1998 returns appellant-husband filed using head of household (HOH) filing status. Appellant-wife apparently filed 1998 and 1999 returns using HOH filing status that are not part of this appeal; respondent indicates that there are no overpayments on appellant-wife's 1998 or 1999 accounts. (Resp. Opening Brief, p.1, fn. 1.)

1 HEARING SUMMARY

2 Background

3 1997

4 Appellants did not file a 1997 tax return by the due date. On March 19, 1999,
5 respondent mailed a notice and demand letter at appellants' last known address on Cambridge Road in
6 Cameron Park, California, informing appellant-husband that it received information indicating that he
7 may be required to file a return for tax year 1997.⁴ In the notice and demand letter, respondent
8 requested that appellant-husband file the 1997 return, provide a copy of any filed return or explain
9 why he was not required to file a return. (Resp. Opening Brief, exhibit A.) Respondent indicates that
10 it has no record of the United States Postal Service (USPS) returning the notice and demand letter as
11 undeliverable. (*Id.* at p. 2, fn. 3, exhibit A.)

12 Respondent did not receive a response from appellants by the due date and issued a
13 Notice of Proposed Assessment (NPA) to appellant-husband on June 1, 1999. The NPA proposes a
14 tax assessment of \$4,950.00 less an exemption credit of \$68.00 for a total tax liability of \$4,882.00.
15 The NPA further proposes a late filing penalty of \$1,220.50, a failure to file upon demand penalty of
16 \$1,220.50, and a filing enforcement fee of \$71, plus applicable interest. (*Id.*, exhibit B.) Respondent
17 mailed the NPA to the same address listed on the notice and demand letter. Appellants did not protest
18 the NPA and the assessment became final.

19 According to respondent, it mailed a Statement of Tax Due (STD) to appellant-husband
20 on or about August 23, 1999. (*Id.* at p. 2.) Appellants failed to pay the balance due and respondent
21 imposed a collection cost recovery fee of \$109.00 and a collection lien fee of \$11, on January 4, 2000,
22 and January 26, 2000, respectively. As a result of collection proceedings, respondent obtained a

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26 ⁴ According to respondent, it received information indicating that appellant-husband received \$1,410 of miscellaneous
27 income from T.C. Aire and \$1,000 of miscellaneous income from John Gonzales. (Resp. Opening Brief, exhibit A.) In
28 addition, due to the fact that appellant-husband held a California State Bar Association license to practice law, respondent
indicates it estimated \$15,529 of income based on the 1997 industry average. (Resp. Opening Brief, p. 2, fn. 2.) This
appears to be incorrect, as the NPA sets forth a total estimated income of \$73,146. Respondent may wish to clarify the
correct amount at the oral hearing. According to respondent, it does not maintain copies of computer-generated letters, such
as notice and demand letters, issued prior to 1999. (Resp. Opening Brief, p. 3, fn. 8.)

1 July 19, 2002, payment of \$10,390.03. (*Id.*, exhibit C.)⁵

2 On December 23, 2005, appellants filed a 1997 return. (*Id.*, exhibit D.)⁶ On that
3 return, appellants used the married filing jointly filing status and reported California adjusted gross
4 income (AGI) of \$33,472, a standard deduction of \$5,166, a taxable income of \$28,306, and,
5 according to respondent, a total tax liability of \$284.00. Respondent processed appellants' return and
6 adjusted appellants' tax liability to \$284.00, reducing the demand penalty to \$71 and the late filing
7 penalty to \$100, which resulted in a credit balance of \$9,551.13. (*Id.*, exhibit E.) Respondent
8 apparently treated the 1997 return as a claim for refund. Respondent subsequently sent appellants a
9 letter informing them that their claim for refund was denied because the statute of limitations had
10 expired. (App. July 2, 2006, Appeal Letter, attachment.) This timely appeal followed.

11 1998

12 Appellants did not file a 1998 tax return by the due date. On March 6, 2000,
13 respondent sent a notice and demand letter to appellants' last known address on Cambridge Road in
14 Cameron Park, informing appellant-husband that it received information indicating that he may be
15 required to file a return for tax year 1998.⁷ In the notice and demand letter, respondent requested that
16 appellant-husband file the 1998 return, provide a copy of any filed return or explain why he was not
17 required to file the return. Respondent indicates that it has no record of the USPS returning the notice
18 and demand letter as undeliverable. (Resp. Opening Brief, p. 4, fn. 9, exhibit E.)

19 Respondent did not receive a response from appellant-husband and issued an NPA on
20 May 8, 2000. The NPA proposes a tax assessment of \$4,899.00 less \$70.00 of exemption credit for a
21 total tax liability of \$4,829.00. The NPA also proposes a late filing penalty of \$1,207.25, a failure to
22 file upon demand penalty of \$1,207.25, and a filing enforcement fee of \$69, plus applicable interest.

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24 ⁵ In its opening brief, respondent inadvertently states in one instance that it received the payment of \$10,390.03 on June 19,
25 2002 (Resp. Opening Brief, p. 3), but in another instance asserts that the payment was received on July 19, 2002 (*Id.* at p. 6).
26 Staff notes that respondent's computer record indicates that the payment was received on July 19, 2002. (*Id.*, exhibit C.)

27 ⁶ Respondent only retained the first page of the 1997 and 1998 California returns (and portions of the 1997 and 1998 federal
28 returns). (Resp. Opening Brief, pp. 3, 5, fn. 5.)

⁷ Due to the fact that appellant-husband held a California State Bar Association license to practice law, respondent estimated
\$73,048 of income based on the 1998 industry average. (Resp. Opening Brief, p. 3, fn. 6.)

1 (*Id.*, exhibit F.) Respondent mailed the NPA to the same address listed on the notice and demand
2 letter. Appellant-husband did not protest the NPA and the assessment became final.

3 According to respondent, it mailed an STD to appellant-husband at his last known
4 address on Cambridge Road in Cameron Park on or about August 1, 2000. (*Id.*, at p. 4.) Appellant-
5 husband failed to pay the balance due. Respondent imposed a lien fee of \$11 and started collection
6 proceedings, resulting in a November 21, 2000, payment of \$109.72 and a July 19, 2002, payment of
7 \$9,190.74. (*Id.*, exhibit G.)

8 On December 23, 2005, appellant-husband filed a 1998 return. On that return,
9 appellant-husband used the head of household (HOH) filing status and reported California AGI of
10 \$28,874, a standard deduction of \$5,284, taxable income of \$23,590, and, according to respondent, a
11 total tax liability of \$46.00. (*Id.*, exhibit H.) Respondent processed appellant-husband's return and
12 adjusted his tax liability to \$46, reducing the notice and demand penalty to \$11.50, the late filing
13 penalty to \$46.00 and abating the filing enforcement fee, which resulted in a credit balance of
14 \$9,172.46. (*Id.*, p. 5, exhibit G.) Respondent apparently treated the 1998 return as a claim for refund.
15 Respondent subsequently sent appellant-husband a letter informing him that his claim for refund was
16 denied because the statute of limitations had expired. (App. July 2, 2006, Appeal Letter , attachment.)
17 This timely appeal followed.

18 1999

19 Appellant-husband submitted a \$203 extension payment effective April 15, 2000, for
20 tax year 1999, but he did not file a 1999 return by the filing deadline. (Resp. Opening Brief, p. 5,
21 exhibit I.) On May 6, 2005, appellant-husband filed a 1999 California personal income tax return.
22 (*Id.*, exhibit J.)⁸ On that return, appellant-husband used the HOH filing status and reported California
23 AGI of \$24,851, itemized deductions of \$11,922, taxable income of \$12,929, and no tax liability.
24 Respondent processed appellant-husband's return and adjusted appellant-husband's tax liability to
25 zero, which resulted in a credit balance on appellant-husband's 1999 account in the amount of \$203.
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28 ⁸ Respondent inadvertently states in one instance in its opening brief that appellant-husband filed his 1999 return on
December 23, 2005 (Resp. Opening Brief, p. 7), but in another instance asserts that the 1999 return was filed on May 6, 2005
(*Id.* at p. 5). Staff notes that the 1999 return is date stamped received on May 6, 2005. (*Id.*, exhibit J.)

1 (*Id.*, p. 5.) Respondent apparently treated the 1999 return as a claim for refund. Respondent
2 subsequently sent appellant-husband a letter informing him that his claim for refund was denied
3 because the statute of limitations had expired. (App. July 2, 2006, Appeal Letter, attachment.) This
4 timely appeal followed.

5 Appellant's Contentions

6 On appeal, appellants do not dispute that the returns at issue were not timely filed or
7 that respondent mailed the notice and demand letters and NPAs to the proper address. Appellants
8 argue that their claims for refund are not barred by the statute of limitations.⁹ Appellants further argue
9 that they are entitled to refunds of all overpayments made to their tax accounts because they complied
10 with all of the requirements for the tax amnesty program. According to appellants, respondent's
11 refusal to refund overpayments constitutes a penalty and thus must be waived under the tax amnesty
12 program. Appellants also apparently argue that their claims for refund should be granted on the
13 grounds of equitable estoppel and equitable tolling for the following reasons: (1) respondent failed to
14 inform them in a timely manner that it had not received all of the returns appellants mailed to it on
15 April 28, 2005; (2) appellant-husband had gallbladder surgery and marital difficulties; (3) appellant-
16 husband did not know that appellant-wife had filed returns using HOH filing status for tax years 1998
17 and 1999; (4) the overpayments are disproportionate to the actual tax liabilities for the years at issue;
18 (5) denial of the claims for refund violates the promotion of horizontal equity and promotes
19 delinquency in payment; and (6) appellants would have been better off today if they had never paid
20 any of their tax liabilities.

21 Appellants contend that they timely filed a completed tax amnesty application and hired
22 a tax preparer to prepare their California and federal returns for tax years 1996 through 2002 with the
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24 ⁹ In their *in pro per* opening brief, appellants assert that they have met the requirements of R&TC 19308, subdivision (b) and
25 19311, subdivisions (a)(1) and (a)(2), citing an attached IRS certified copy of appellant-husband's federal account for tax
26 year 1998 dated August 24, 2004. These statutory provisions concern the time limit for filing claims for credit or refund due
27 to either extensions of the period for proposing and assessing federal deficiencies or changes made to federal assessments.
28 Staff finds no evidence in the record that indicates that appellants and the IRS agreed to an extension of the period for
proposing and assessing any federal deficiencies or that any federal changes were made to any federal assessments. Without
providing any authority, appellants also assert in their opening brief that the "Doctrine of Reciprocity" applies to their
benefit. Staff notes that appellants' TAAP representatives do not refer to R&TC sections 19308 or 19311 or the "Doctrine of
Reciprocity" in the reply or supplemental briefs.

1 intent of qualifying for the tax amnesty program. Appellants also contend that on April 28, 2005, their
2 tax preparer provided these completed California and federal returns to them and on this date they
3 mailed via the USPS their California returns for tax years 1996 through 2002 in a single envelope to
4 respondent and their federal returns for the same tax years in another single envelope to the Internal
5 Revenue Service (IRS). Appellants further contend that the IRS received and processed their federal
6 returns without any problem.

7 With respect to their California returns, appellants contend that appellant-husband
8 contacted respondent several times to inquire on the status of the refunds and on two separate
9 occasions respondent informed him that the returns were still being processed without any mention of
10 the returns not having been received by respondent. Appellants contend that the third time appellant-
11 husband inquired respondent informed him that it had not received the 1997, 1998 or 1999 returns.
12 Appellants contend that their tax preparer subsequently mailed copies of these returns to respondent.
13 Appellants contend that appellant-husband thereafter inquired for the fourth time on the status of the
14 refunds and respondent again informed him that it had not received the 1997, 1998 or 1999 returns.
15 Appellants mailed additional copies of these returns to respondent via registered mail and respondent
16 subsequently acknowledged receiving the returns.

17 Appellants contend that in January or February 2006, respondent informed appellant-
18 husband for the first time that the claims for refund for tax years 1997, 1998 and 1999 were barred by
19 the statute of limitations. Appellants also contend that they received refunds from respondent for tax
20 years 1996, 2000 and 2001. According to appellants, respondent informed appellant-husband that
21 these refunds were made because respondent received the 1996, 2000, and 2001 returns within the
22 time mandated under the tax amnesty program. Appellants contend that respondent should have
23 received all of the returns for tax years 1996 through 2002 at the same time since they were all mailed
24 in a single envelope on April 28, 2005.

25 Respondent's Contentions

26 Respondent argues that the statute of limitations bars the claims for refund for tax years
27 1997, 1998 and 1999 and the statute of limitations is strictly construed. Respondent further contends
28 that appellants are not entitled to any waiver of the statutes of limitations for any of the years at issue.

1 Respondent contends that the claims for refund would still be barred by the statutes of limitations even
2 if the returns had been filed in or about April 2005. Respondent also contends that it has no
3 knowledge or record of the USPS ever returning any of the notice and demand letters as undeliverable.
4 In the event that any of the claims for refund for tax years 1997, 1998 and 1999 is not barred by the
5 statutes of limitations, respondent contends that it is entitled to determine appellants' tax liabilities
6 from any available information that provides the necessary information since appellants failed to
7 timely file returns for the years at issue. Lastly, respondent contends that appellants are not entitled to
8 any refunds under the tax amnesty program.

9 Applicable Law

10 Statute of Limitations

11 The relevant statute of limitations is set forth in Revenue and Taxation Code (R&TC)
12 section 19306. R&TC section 19306 requires taxpayers to file a claim for refund within the later of:
13 (1) four years from the date the return was filed (if timely filed within the specified extension periods);
14 (2) four years of the due date of the return (without regard to any extensions of time to file); or (3) one
15 year from the date of the overpayment. The Board has consistently held that the statute of limitations
16 on claims for refund is explicit and must be strictly construed, without exception. (*Appeal of Michael*
17 *and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978; *Appeal of James C. and Florence Meek*, 2006-SBE-
18 001, Mar. 28, 2006.) Regardless of the reason, a taxpayer who fails to file a claim for refund within
19 the statutory period is barred from filing a claim for refund at a later date. (*Appeal of Earl and Marion*
20 *Matthiessen*, 85-SBE-077, July 30, 1985.) Furthermore, respondent is not required to inform a
21 taxpayer of the time within which a claim must be filed. (*Ibid.*) Federal courts have stated that fixed
22 deadlines may appear harsh because they can be missed, but the resulting occasional harshness is
23 redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223
24 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

25 The Board has also considered the doctrine of equitable tolling and held that, absent
26 direction from the Legislature, the statute of limitations in R&TC section 19306 is not subject to
27 equitable tolling. (*Appeal of James C. and Florence Meek, supra, Appeal of Earl W. and Patricia A.*
28 *McFeaters*, 94-SBE-012, Nov. 30, 1994; see also *United States v. Brockamp* (1997) 519 U.S. 347.)

1 However, there is a statutory exception to the statute of limitations that may be at issue here, although
2 neither party raises it. R&TC section 19316 tolls the statute of limitations during a period of
3 “financial disability,” which is defined by the statute as meaning that the taxpayer was unable to
4 manage his or her financial affairs due to a medically determinable physical or mental impairment that
5 is either deemed to be a terminal impairment or is expected to last for a continuous period of not less
6 than 12 months. (Rev. & Tax. Code, § 19316, subs. (a) & (b)(1).) An individual taxpayer will not
7 meet the provisions of R&TC section 19316 if, for any period, the individual’s spouse, or any other
8 person, is legally authorized to act on the individual’s behalf in financial matters. (Rev. & Tax. Code,
9 § 19316, subd. (b)(2).) In order to demonstrate the existence of a financial disability, an appellant
10 must submit a signed affidavit from a physician that explains the nature and duration of any physical
11 or mental impairments. (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006.) In
12 addition, an appellant must show that he or she satisfies the strict definition of “financial disability”
13 such that he or she could not manage his or her financial affairs. (*Id.*) It is not sufficient to show that
14 an appellant could not engage in a regular occupation or that he or she was “disabled” under other
15 statutory definitions of disability. (*Id.*) In accordance with R&TC section 19316, respondent has
16 published Form 1564 to allow taxpayers to substantiate a financial disability.

17 Equitable Estoppel

18 Appellants’ contention that respondent failed to inform them in a timely manner that it
19 had not received any or all of the returns mailed to it on April 28, 2005, sounds in the nature of an
20 equitable estoppel argument. The following four elements must be present in order to apply the
21 doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must
22 intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a
23 right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and
24 (4) the other party must rely upon the conduct to her injury. (*Strong v. County of Santa Cruz* (1975)
25 15 Cal. 3d 720, 725.) Equitable estoppel may be applied against the government in order to prevent a
26 grave injustice, but the doctrine is inapplicable if it would result in the nullification of a strong rule of
27 policy adopted for the benefit of the public. (*Ibid.*)

28 This Board has held that reliance on informal opinions of respondent’s employees does

1 not create estoppel against respondent. (*Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, May 4,
2 1976; *Appeal of Mary M. Goforth*, 80-SBE-158, Dec. 9, 1980.) The Board has consistently refused to
3 invoke the doctrine when taxpayers have understated their tax liability on tax returns in alleged
4 reliance on erroneous information provided by FTB employees. (*Appeal of Richard R. and Diane K.*
5 *Smith*, 91-SBE-005, Oct. 9, 1991; *Appeal of Harry H. and Alice P. Freer*, 84-SBE-127, Sept. 12,
6 1984. Further, this Board has refused to estop respondent when the estoppel claim arose from alleged
7 reliance on statements made by employees of a different agency, such as the IRS. (*Appeal of E.J., Jr.*
8 *and Dorothy Saal*, 83-SBE-038, Feb. 1, 1983.)

9 Tax Amnesty Program

10 R&TC sections 19730 through 19738 set forth the tax amnesty program for taxpayers
11 subject to the Personal Income Tax Law and the Corporation Tax Law. The amnesty program was
12 conducted during the two-month period beginning February 1, 2005, and ending March 31, 2005, and
13 applied to tax liabilities for taxable years beginning before January 1, 2003. (Rev. & Tax. Code,
14 § 19731.) If an eligible taxpayer fully paid the taxpayer's unpaid tax obligations and met the other
15 requirements of the amnesty program, respondent waived all *unpaid* penalties and fees imposed, and
16 no criminal action would be brought against the taxpayer for years subject to the amnesty program.
17 (Rev. & Tax. Code, § 19732.) R&TC section 19777.5 generally provides that, for each tax year for
18 which amnesty could have been requested by the taxpayer, a post-amnesty penalty will be imposed in
19 an amount equal to 50 percent of interest accrued on unpaid tax as of the last day of the amnesty
20 period (March 31, 2005). The post-amnesty penalty is imposed in addition to any other applicable
21 penalties.

22 STAFF COMMENTS

23 Statute of Limitations

24 Appellants' 1997 return was due April 15, 1998. The four-year statute of limitations
25 expired on April 15, 2002. Appellants filed their 1997 joint return, which constitutes their claim for
26 refund, on December 23, 2005, and therefore their claim for refund appears to be untimely under the
27 four-year period. Alternatively, appellants' claim for refund must have been made within one year of
28 when the payment was made. Respondent collected a payment in the amount of \$10,390.03 on

1 July 19, 2002, and therefore appellants' claim for refund appears to be untimely under the one-year
2 period as well.

3 Appellant-husband's 1998 return was due April 15, 1999. The four-year statute of
4 limitations expired on April 15, 2003. Appellant-husband filed his 1998 return, which constitutes his
5 claim for refund, on December 23, 2005, and therefore his claim for refund appears to be untimely
6 under the four-year period. Alternatively, appellant-husband's claim for refund must have been made
7 within one year of when the payment was made. Respondent collected a payment in the amount of
8 \$109.72 on November 21, 2000, and another payment in the amount of \$9,100.74 on July 19, 2002. In
9 order for the one-year statute of limitations to apply, appellant-husband must have filed a claim for
10 refund no later than November 21, 2001, and July 19, 2003, respectively, to claim refunds of these
11 payments.

12 Appellant-husband's 1999 return was due April 17, 2000.¹⁰ The four-year statute of
13 limitations expired on April 17, 2004. Appellant-husband did not file his 1999 return, which
14 constitutes his claim for refund, until May 6, 2005, and therefore his claim for refund appears to be
15 untimely under the four-year period. Alternatively, appellant-husband's claim for refund must have
16 been made within one year of when the payment was made. Appellant-husband's made an extension
17 payment in the amount of \$203 effective April 15, 2000. In order for the one-year statute of
18 limitations to apply, appellant-husband must have filed a claim for refund no later than April 15, 2001.

19 Absent any tolling for financial disability, it appears that appellants' claims for refund
20 for tax years 1997, 1998, and 1999 would be barred by the statute of limitations. Staff notes that,
21 although appellant-husband's 1999 return was filed on May 6, 2005, appellants' 1997 return and
22 appellant-husband's 1998 return were not filed until December 23, 2005. Yet, appellants contend that
23 the 1997, 1998 and 1999 returns were all mailed to respondent in a single envelope on April 28, 2005.
24 As discussed above, appellant-husband's claim for refund for tax year 1999 appears to be barred by
25 the statute of limitations, even though his 1999 return was filed within 10 days of when appellants
26 apparently mailed it to respondent. Assuming that respondent had also received and filed the 1997 and
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28 ¹⁰ April 15, 2000, was a Saturday.

1 1998 returns on May 6, 2005 (or even on April 28, 2005, for that matter), staff notes that the claims for
2 refund for these years would still apparently be barred by the statute of limitations for the reasons
3 discussed above.

4 Appellants have not yet alleged or demonstrated that either of them suffered from a
5 “financial disability” for purposes of R&TC section 19316 (i.e., that he or she could not manage his or
6 her own financial affairs); nor has either of them demonstrated impairment that continued for a period
7 long enough to toll the statute of limitations beyond the deadline to file a claim for refund under the
8 four-year period or one-year period of limitation. Moreover, neither one may be considered
9 “financially disabled” for any period during which the other was legally authorized to act on his or her
10 behalf in financial matters. In the event that appellants wish to assert the existence of a financial
11 disability for purposes of R&TC section 19316, they should submit a signed affidavit from a physician
12 on or before the hearing date that explains the nature and duration of the relevant physical or mental
13 impairment. Staff notes that appellant-husband’s illness and gallbladder surgery (discussed with
14 respect to the 1997 tax year) are purported to have occurred “during the tax year” and thus appear to
15 have no bearing on the 1997 four-year statute of limitations period (April 15, 1998, through April 15,
16 2002.)

17 Respondent may want to be prepared to discuss whether and when it received
18 appellants’ returns for tax years 1996, 2000, 2001, and 2002 and whether appellants, jointly or
19 individually, received refunds for any of these years. If so, respondent may want to be prepared to
20 explain at the hearing why these claims for refund, as opposed to the claims for refund for tax years
21 1997, 1989, and 1999, were not barred by the statute of limitations.

22 Equitable Estoppel

23 Equitable estoppel does not appear to apply here because any alleged reliance on any
24 statements made by respondent’s employees occurred after the statute of limitations apparently ran.
25 Staff also notes that it is unaware of any instance where a California appellate court has applied the
26 doctrine of equitable estoppel to a tax case involving the statute of limitations at issue here. Although
27 he contends that he did not know that appellant-wife did not file joint returns for tax year 1998 and
28 1999, it appears to staff that appellant-husband, a licensed attorney, knew or should have known that

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returns were not filed on his behalf since he apparently did not sign any returns for these years.

Tax Amnesty Program

It appears that appellants would not be entitled under the tax amnesty program to any refund of any taxes, penalties, fees or interest paid for tax years 1997, 1998, or 1999, even if their returns for these tax years had been filed on or before May 30, 2005, the last day to comply with the tax amnesty program (Rev. & Tax. Code, § 19733, subdiv. (a)(3).) Staff notes that appellants had no outstanding taxes, penalties, or interest due for the tax years at issue during the tax amnesty program period, February 1, 2005, through March 31, 2005. It appears that there is no provision in the tax amnesty program for any refund or credit with respect to any taxes, penalties, fees or interest previously paid for tax years beginning before January 1, 2003. Moreover, it appears that R&TC section 19732, subdivision (d), precludes any refund or credit under the tax amnesty program with respect to any penalty previously paid for tax years beginning before January 1, 2003.

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