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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **CHARLES E. GRAYS II¹**) Case No. 464314
13)

<u>Years</u>	<u>Claims for Refund</u>
1995	\$6,519.25
1996	\$917.97
1997	\$2,748.15
1998	\$1,124.82
1999	\$3,132.46
2000	\$220.00
2001	\$2,808.46
2002	\$3,113.36

20 Representing the Parties:

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22 For Appellant: Charles E. Grays II
23 For Franchise Tax Board: Suzanne L. Small, Tax Counsel III

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26 ¹ Appellant resides in Los Angeles, in the County of Los Angeles.

27 ² An oral hearing was originally scheduled for the February 2010 calendar. The appeal was subsequently rescheduled to the
28 June 2010 calendar at appellant's request. The appeal was postponed again at appellant's request due to appellant's required presence at the Los Angeles Superior Court on June 15, 2010, the same day of his rescheduled hearing. The appeal was then rescheduled to the October 19-22, 2010 Culver City calendar.

1 QUESTION: Did appellant timely file refund claims for the tax years beginning 1995 through and
2 including 2002.

3 HEARING SUMMARY

4 Background

5 *1995*

6 Respondent received information from the California Employment Development
7 Department (EDD) that appellant earned sufficient income in 1995 to require the filing of a return.
8 Since none was filed, respondent mailed a notice and demand letter to appellant's last known address on
9 May 13, 1997, requesting appellant to file a return. When no response was received, respondent issued
10 a Notice of Proposed Assessment (NPA) in the total amount of \$3,694.74 in tax, penalties and interest.
11 This NPA was not protested and became final. Respondent mailed a Statement of Tax Due on
12 October 14, 1997, informing appellant of potential collection action, including the filing of a tax lien.
13 When the balance was not paid, respondent commenced collection action. In September 2005,
14 respondent imposed a post-amnesty penalty of \$805.63. Collection action apparently resulted in the
15 garnishment of appellant's wages with the last payment of \$325 collected on November 3, 2005. This
16 last payment settled the remaining balance due and \$113.79 of the payment was transferred to
17 appellant's 1996 tax year. On January 24, 2008, appellant filed his 1995 return reporting California
18 adjusted gross income (AGI) of \$43,119. After applicable deductions, withholding credits, and
19 estimated tax payments of \$5,202, appellant reported zero tax due. Respondent accepted this return and
20 adjusted appellant's tax liability to zero for 1995. However, respondent claims it had no record of
21 estimated tax payments made. Based on this return, respondent abated the notice and demand penalty,
22 late filing penalty, post-amnesty penalty and abated interest and the filing enforcement fee. Respondent
23 contends that these abatements totaled \$6,519.25 and was treated as a refund claim, which respondent
24 denied on September 22, 2008, on the grounds that it was time-barred by the statute of limitations.

25 *1996*

26 For 1996, the factual scenario is similar to 1995, i.e., respondent received information
27 from the EDD that appellant earned sufficient income in 1996 to require the filing of a return, none was
28 filed, which resulted in an unprotested NPA, various penalties and interest. Collection action was taken

1 from November 3, 1999 through June 10, 2005. The balance due was deemed paid in full on
2 November 3, 2005 when, as stated above, respondent transferred \$113.79 from the 1995 tax year. On
3 February 9, 2006, appellant filed his 1996 tax return, reporting self-assessed tax of \$262 and requesting
4 a refund of \$2,043. Respondent accepted this return as filed, reducing the notice and demand penalty to
5 \$65.50 and completely abating the late filing and post-amnesty penalty and the filing enforcement fee.
6 Respondent claims this resulted in a requested refund of \$2,225.54, of which \$1,334.57, plus \$12.11 in
7 allowed interest was credited to appellant's 2002 tax year because such collection payments were made
8 within one year of appellant's February 9, 2006 refund claim (i.e., respondent was collecting payments
9 up until November 3, 2005 for the 1996 year). Respondent claims that the remaining amount of \$917.97
10 was treated as a refund claim which respondent denied on September 23, 2008, as time-barred by the
11 statute of limitations.

12 *1997*

13 For 1997, the factual scenario is similar to the prior years at issue, i.e., respondent
14 received information from the EDD that appellant earned sufficient income in 1997 to require the filing
15 of a return, none was filed, which resulted in an unprotested NPA, various penalties and interest.
16 Respondent then commenced collection action which resulted in payments totaling \$2,910.06³ that were
17 posted to appellant's account from April 1, 2006 to December 4, 2006. Respondent then transferred the
18 following overpayments to appellant's 1997 account: \$1,096.64 from the 2004 tax year on February 16,
19 2008, \$126.83 from the 2006 tax year on February 23, 2008, and \$785.89 from the 2005 tax year on
20 March 12, 2008. On January 24, 2008, appellant filed his 1997 return with self-assessed tax of \$650,
21 claiming payments made of \$2,585 and a refund of \$2,660 on the return. Respondent accepted the
22 return, but had no record of any payments totaling \$2,585. Based on this refund claim, respondent
23 completely abated the late filing penalty and filing enforcement fee and reduced the notice and demand
24 penalty to \$162.50 and the post-amnesty penalty to \$22.32. This reduction in tax and penalties resulted
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27 ³ In respondent's opening brief on page 6, respondent indicated the amount was \$2,917.45. However when Board staff
28 originally totaled the lines referred to by respondent, we arrived at \$3,235.06. (See Resp. Opening Br. at 6 and Exhibit N
lines 3-11.) In a subsequent memorandum to this Board dated February 11, 2010, respondent explained the correct amount
was \$2,910.06. Respondent indicated that their system reprints the last line from one page (which in this case was line 9) on
the next successive page.

1 in an overpayment on the 1997 tax year in the amount of \$4,764.90, \$2,009.36 of which was applied to
2 appellant's 1997 tax year within one year of the filing of appellant's January 24, 2008 refund claim for
3 1997. Respondent therefore refunded this amount plus \$7.39,⁴ but denied a refund of the remaining
4 \$2,748.15 on June 26, 2008, as time barred by the statute of limitations.

5 *1998*

6 For 1998, the factual scenario is similar to the prior years at issue, i.e., EDD reported
7 sufficient wages to require a return filing, appellant failed to file a return, which resulted in an
8 unprotested NPA, various penalties and interest. Respondent commenced collection action with
9 payments totaling \$911.32 that were posted to appellant's 1998 account from November 14, 2000 to
10 June 27, 2001. On January 24, 2008, appellant filed his 1998 return with self-assessed tax of \$362,
11 claiming payments made of \$911 and a refund of \$1,228 on the return. Respondent accepted the return,
12 but had no record of any payments totaling \$911. Based on this refund claim, respondent completely
13 abated the late filing penalty, filing enforcement fee and post-amnesty penalty and reduced the notice
14 and demand penalty to \$90.50. This reduction in tax and penalties resulted in an overpayment on the
15 1998 tax year in the amount of \$3,143.66. Since a portion of this amount was requested within one year
16 of payment (collections), respondent refunded \$2,018.84 to appellant, but denied a refund of the
17 remaining \$1,124.82 on June 26, 2008 as time barred by the statute of limitations.

18 *1999*

19 For 1999, the facts are similar to the earlier years. The EDD reported appellant's wages
20 of \$45,536, no return was filed, which resulted in an unprotested NPA, various penalties and interest.
21 Respondent then commenced collection action which resulted in payments totaling \$2,997.96 that were
22 posted to appellant's 1999 account from January 14, 2002 to January 9, 2004. On January 24, 2008,
23 appellant filed his 1999 return with self-assessed tax of \$518, claiming estimated payments made of
24 \$2,998 and a refund of \$3,262 on the return. Respondent accepted the return, but had no record of any
25 payments totaling \$2,998. Based on this refund claim, respondent completely abated the late filing
26 penalty and filing enforcement fee and reduced the notice and demand penalty to \$129.50. This
27 reduction in tax and penalties resulted in an overpayment on the 1998 tax year in the amount of
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⁴ Appellant provided a copy of a 1997 refund check it received for \$2,016.75. (App. Reply Br. at 7.)

1 \$3,132.46 which respondent denied as a refund on June 26, 2008, as time barred by the statute of
2 limitations.

3 *2000*

4 Appellant filed a tax return for 2000 on January 24, 2008, reporting zero self-assessed tax
5 and reporting withholding credits of \$220. Respondent processed and accepted this return as filed, but
6 denied the \$220 refund on June 26, 2008, as time barred by the statute of limitations.

7 *2001*

8 The 2001 tax year is similar to the 1999 tax year, in that EDD records disclosed
9 appellant's wages to be \$46,105, no return was filed, which resulted in an unprotested NPA, various
10 penalties and interest. Respondent then commenced collection action which resulted in payments
11 totaling \$2,439.46 that were posted to appellant's 2001 account from January 9, 2004 to September 10,
12 2004. On January 24, 2008, appellant filed his 2001 return with self-assessed tax of \$356, claiming
13 estimated payments made of \$2,439 and a refund of \$2,897 on the return. Respondent accepted the
14 return, but had no record of any payments totaling \$2,897. Based on this refund claim, respondent
15 completely abated the late filing penalty and filing enforcement fee and reduced the notice and demand
16 penalty to \$89. This reduction in tax and penalties resulted in an overpayment on the 2001 tax year in
17 the amount of \$2,808.46 which respondent treated as a refund claim which it denied on June 26, 2008,
18 as time barred by the statute of limitations.

19 *2002*

20 The 2002 tax year is similar to the 2001 tax year, in that EDD records disclosed
21 appellant's wages to be \$49,307, no return was filed, which resulted in an unprotested NPA, various
22 penalties and interest. Respondent commenced collection action which resulted in payments totaling
23 \$1,639.94 that were posted to appellant's 2002 account from November 7, 2005 to April 1, 2006. Then
24 on April 5, 2006, respondent transferred an overpayment from the 1996 tax year in the amount of
25 \$1,346.68 to satisfy the balance of the 2002 tax year. On January 24, 2008, appellant filed his 2002
26 return with self-assessed tax of \$513, claiming estimated payments made of \$975 and a refund of \$1,230
27 on the return. Respondent accepted the return, but had no record of any payments totaling \$975. Based
28 on this refund claim, respondent completely abated the late filing penalty and filing enforcement fee and

1 reduced the notice and demand penalty to \$128.25. This reduction in tax and penalties resulted in an
2 overpayment on the 2002 tax year in the amount of \$3,113.36 which respondent denied as time barred
3 by the statute of limitations.

4 This timely appeal followed.

5 Contentions

6 Appellant's Contentions

7 Appellant appears to contend that the four-year statute of limitations expires four years
8 from the date a payment is collected and that the refund claims were timely made within those four
9 years. Appellant also appears to contend that respondent has arbitrarily applied payments between years
10 and has over collected amounts as part of its collection process. Appellant claims that the returns were
11 not filed due to factors in his life that were out of control.

12 Appellant contends that he never received mailings at either of his two South Pasadena
13 addresses and that he lived at a different address in Los Angeles (the LA Address).

14 Appellant contends that he has been subjected to double taxation. It appears that
15 appellant may be referring to the fact that he was subject to regular wage withholding and collection
16 efforts for other tax years that occurred simultaneously.

17 Appellant appears to contend that for the tax years at issue due to family misfortunes, he
18 was physically unable to file his tax returns. Appellant also appears to place part of the responsibility
19 for not filing earlier with his CPA.

20 Finally, appellant contends that he filed for bankruptcy and that respondent's collection
21 efforts violated the automatic stay conditions of that filing.

22 Respondent's Contentions

23 Respondent contends that for each of the tax years at issue appellant's refund claims were
24 barred by both the four-year and one-year statute of limitations. Respondent provided the following
25 chart to show how this occurred.

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		Column A	Column B	Column C
Tax Year	Return due date ⁵	4-Year statute expires	Date last payment applied	Refund claim date
1995	April 15, 1996	April 15, 2000	Oct. 11, 2005	Jan. 24, 2008
1996	April 15, 1997	April 15, 2001	June 10, 2005	Feb. 9, 2006
1997	April 15, 1998	April 15, 2002	March 12, 2008	Jan. 24, 2008
1998	April 15, 1999	April 15, 2003	March 12, 2008	Jan. 24, 2008
1999	April 15, 2000	April 15, 2004	January 9, 2004	Jan. 24, 2008
2000	April 15, 2001	April 15, 2005	April 15, 2001	Jan. 24, 2008
2001	April 15, 2002	April 15, 2006	Sept. 10, 2004	Jan. 24, 2008
2002	April 15, 2003	April 15, 2007	April 5, 2006	Jan. 24, 2008

In each case, respondent asserts that the refund claim (Column C) was made after close of the four-year statute (Column A). Thus, respondent argues that none of the refund claims satisfied the four-year statute of limitations. As for the one-year statute of limitations, respondent claims that the one-year statute had not expired for all of the payments that were made/credited to appellant's account for 1996, 1997 and 1998 and that as discussed above overpayments on those accounts credited within one year of the refund claim were either refunded to appellant or credited to other tax years. For the remaining tax years and for payments credited for 1996, 1997 and 1998 more than one year before the refund claim date (compare Column B with Column C), according to respondent, the one-year statute of limitations was not satisfied, so no refund/credit was available.

Respondent claims that all mail was sent to appellant's last known addresses, which respondent updated as it received additional information (e.g., a federal Form 1099). (Resp. Supp. Br. at 2 and Exhibit B.) Respondent contends that appellant did not notify respondent of his LA Address until he filed his 1996 return on February 9, 2006, well after the earlier notices had been mailed to appellant. Respondent also contends that all mailings appeared to have been received, as none was returned as undeliverable by the U.S. post office. (Resp. Supp. Br. at 2.)

As for the bankruptcy stay, respondent claims the bankruptcy filing was dismissed by the bankruptcy court on July 12, 1995. (Resp. Supp. Br. at 3 and Exhibit C.) Respondent states that its first NPA for the 1995 tax year was not issued until July 22, 1997. Thus, there were no bankruptcy stay

⁵ Board staff did not review all of the April 15 filing due dates referenced by respondent's chart to determine whether some of these dates fell on a Saturday or Sunday. If that occurred, then the return could have been filed on April 16 or 17 for such years without penalty. (Cal. Code Regs. tit., 18 § 18566.) This issue is not material to the outcome of this case.

1 orders in place when the NPAs and collection efforts were instigated for any of the tax years at issue.

2 Respondent claims that it has no voluntary payment agreement with appellant, but does
3 have a record of a withholding order forwarded to appellant's employer which resulted in regular wage
4 garnishments that were applied to appellant's unpaid final liabilities for the 1995, 1996, 1997, and 1998
5 tax years.

6 As for double taxation, respondent claims that appellant was not taxed twice for any
7 income earned. Instead, appellant is confusing regular wage withholding with wage garnishments that
8 occurred at the same time for unpaid taxes owed from previous tax years.

9 Applicable Law

10 Under R&TC section 19306, a refund is permitted if made within either of the two
11 following periods, whichever is later: (1) four years from when the return was timely filed or four years
12 from the last day prescribed for filing the return (determined without regard to any extension of time for
13 filing the return) (the four-year period); or (2) one year from the time of actual payment (the one-year
14 period). Generally, refunds can only be granted to the extent they fall within these statutory periods.
15 (*Appeal of Robert A. and Nancy R. Jacobs*, 65-SBE-029, Aug. 3, 1965; *see also Prussner v. U.S.* (7th
16 Cir. 1990) 896 F. 2d 218.)

17 The statute of limitations can be extended if the taxpayer can prove he was financially
18 disabled, in that he was unable to manage his financial affairs by reason of a medically determinable
19 physical or mental impairment that is either deemed to be terminal or expected to last for a continuous
20 period of not less than 12 months. (Rev. & Tax. Code, § 19316.) A taxpayer will not be deemed
21 financially disabled if another person is legally authorized to act on behalf of the taxpayer in financial
22 matters. (*Id.* subd. (b)(2).)

23 If respondent determines that an overpayment has been made by a taxpayer for any
24 reason, for any tax year, the amount of the overpayment may be credited against any amount then due
25 from the taxpayer. (Rev. & Tax. Code, § 19301.) When such an overpayment is credited, for purposes
26 of calculating the statute of limitations for refunds for the year to which it was credited, the deemed
27 payment shall occur at the time the credit is allowed. (Rev. & Tax. Code, § 19383.)

28 Tax collected through withholding during the calendar year, for statute of limitation

1 purposes under R&TC section 19306, is deemed to have been paid on the last day prescribed for filing
2 the return (the following April 15). (Rev. & Tax. Code, § 19002, subd. (c)(1).)

3 It is well settled that respondent's mailing of a notice to the taxpayer's last-known address
4 is considered sufficient even if the notice never actually reaches the taxpayer. (*Appeal of Yvonne M.*
5 *Goodwin*, 97-SBE-003, Mar. 19, 1997; *Appeal of Jon W. and Antoinette O. Johnston*, 83-SBE-238,
6 Oct 26, 1983.) Known as the "last-known address rule," this rule protects the taxing agency and the
7 statutory scheme of assessment and appeal from a failure by the taxpayer to inform the taxing agency of
8 a change in address. (*Delman v. Comm'r* (3rd Cir. 1967) 384 F.2d 929, 933.) Here there is no indication
9 that the various notices issued by respondent for the relevant time periods were returned as
10 undeliverable.

11 It is well settled that a presumption of correctness attends respondent's determinations as
12 to issues of fact and that appellant has the burden of proving such determinations erroneous. (*Appeal of*
13 *Oscar D. and Agatha E. Seltzer*, 80-SBE-154, June 29, 1980.) This presumption is, however, a
14 rebuttable one and will support a finding only in the absence of sufficient evidence to the contrary. (*Id.*)
15 Respondent's determination cannot, however, be successfully rebutted when the taxpayer fails to present
16 uncontradicted, credible, competent, and relevant evidence to the contrary. (*Id.*) To overcome the
17 presumed correctness of respondent's findings as to issues of fact, a taxpayer must introduce credible
18 evidence to support his assertions. When the taxpayer fails to support his assertions with such evidence,
19 respondent's determinations must be upheld. (*Id.*) A taxpayer's unsupported assertions are not sufficient
20 to satisfy his burden of proof. (*Appeal of James C. and Monablanche A. Walshe*, 75-SBE-073, Oct. 20,
21 1975.)

22 STAFF COMMENTS

23 It appears to Board staff that the issue of this case is whether appellant's refund claims
24 were made within either the four-year period or the one-year period. Based on the chart above, it
25 appears that for most of the tax years at issue the refund claims were made after the four-year statute
26 expired and that except for some garnishments made for 1996, 1997, and 1998, the remaining refund
27 claims missed the one-year statute on refunds of overpayments. In addition, for 1996, 1997, and 1998, it
28 appears that appellant received partial payments that were made (pursuant to collection activity) within

1 the applicable one-year statute that were either refunded directly to appellant or credited to another tax
2 year balance due pursuant to R&TC section 19301. Thus, at the oral hearing, appellant should be
3 prepared to demonstrate through documentary evidence that the dates utilized by respondent were
4 materially incorrect and whether either the four-year statute or one-year statute was misapplied by
5 respondent.

6 If appellant claims that either the four-year or one-year periods should be tolled due to
7 financial disability, appellant should be prepared to provide documentary evidence that he was not able
8 to handle his financial affairs during these periods, including how appellant was still able to work and
9 support himself financially.

10 Appellant should also be prepared to provide documentary evidence that he regularly
11 updated his address with respondent and that it was respondent who failed to utilize appellant's last
12 known address.

13 Finally, to the extent appellant believes (1) that amounts were garnished during the one-
14 year statute (i.e., one year prior to his refund claim) that were not refunded/credited to him or (2) that
15 estimated payments were made (which respondent has no record of), appellant should provide
16 documentary evidence (such as a paycheck stub) showing the date and amounts of the garnished wages
17 (made within one year of the date of his refund claim) and estimated tax payment check copies (also
18 made within one year of the date of his refund claim). In addition, for any denied estimated tax
19 payments, appellant should explain whether he treated any of his employer related income tax
20 withholding or garnished wages as an estimated payment, or whether his claimed estimated tax
21 payments were in fact additional supplemental checks made out in favor of respondent as estimated tax
22 payments for any of the refund years at issue. As stated above, if copies of such checks exist, appellant
23 should bring them to the oral hearing.

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