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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

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10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **STEVEN A. MCMAHON<sup>1</sup>** ) Case No. 479981

	<u>Years</u>	<u>Claims For Refund</u>
	2000	\$15,421.29
	2001	\$14,395.06

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17 Representing the Parties:

18 For Appellant: Steven A. McMahon  
19 For Franchise Tax Board: Lisa Lawson, Administrator II  
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21 QUESTION: Whether appellant's claims for refund are barred by the statute of limitations.

22 HEARING SUMMARY

23 Facts

24 Tax Year 2000

25 Appellant did not file a timely California income tax return for tax year 2000.

26 Respondent issued a Request for Tax Return (Request) on May 28, 2002, indicating that it received  
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28 <sup>1</sup> Appellant resides in Fountain Valley, Orange County, California.

1 information that appellant earned sufficient income to require a tax return and requested that appellant  
2 file a tax return by July 3, 2002. (Resp. Op. Br., p. 1 & exhibit A.) Respondent then issued a Notice of  
3 Proposed Assessment (NPA) on November 4, 2002, indicating that it did not receive a response to the  
4 Request. (*Id.* at exhibit B.) Respondent used a total estimated income of \$177,441 based on Form  
5 1099s and W2s from Salomon Smith Barney, Inc. (Smith Barney), and Logistics Express, Inc.<sup>2</sup> The  
6 2000 NPA proposed a tax liability of \$13,951.00, a late filing penalty of \$3,487.75, and applicable  
7 interest.<sup>3</sup> (*Ibid.*) When appellant did not timely protest the NPA, it became final, due and payable on  
8 January 3, 2003. (*Id.* at p. 2.)

9 Appellant indicates that he received a call from respondent in February or March of 2003,  
10 indicating that he had a liability and a payment of \$20,000 would stop the clock on penalties and  
11 interest. (Appeal Letter, p. 3.)<sup>4</sup> Appellant sent a payment of \$20,000 on March 10, 2003, which  
12 respondent indicates it applied to appellant's 2000 tax liability. (Resp. Op. Br., exhibit C.) Respondent  
13 issued a Notice of Tax Due on May 12, 2003, informing appellant that he had a balance due of \$68, and  
14 then a Final Notice reporting the same amount due on July 17, 2003. (*Id.* at exhibit D.)

15 Appellant filed his 2000 California tax return on October 15, 2006, reporting a California  
16 adjusted gross income of \$68,116 and a total tax of \$3,769. (Appeal Letter, exhibits; Resp. Op. Br.,  
17 exhibit F.) Respondent notes that it accepted this return, abating the NPA tax and penalty, and  
18 cancelling appellant's remaining 2000 tax liability. (Resp. Op. Br., p. 2.) This resulted in an  
19 overpayment of \$15,421.29. (*Id.* at exhibit C.) Appellant submitted a letter on August 14, 2008,  
20 requesting a refund for 2000. (Appeal Letter, exhibits.) Respondent determined that appellant's 2000  
21 tax return was filed after the statute of limitations had run for a claim for refund, and issued a letter on  
22 October 30, 2008, denying the claim for refund on those grounds. (*Ibid.*)

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24 <sup>2</sup> Respondent's NPA reflects a W2 amount from Logistics Express, Inc., of \$18,942; 1099 dividend income from Smith  
25 Barney of \$1,515; and miscellaneous 1099 income from Smith Barney in the amounts of \$57,393, \$53,735, \$27,930, and  
26 \$17,926.

27 <sup>3</sup> Respondent applied the standard deduction of \$2,811 to reach a taxable income of \$174,630 and a tax of \$14,486, then  
28 applied withholding credits of \$535 to reach the tax liability of \$13,951.

<sup>4</sup> Appellant subsequently makes the statement that no one ever contacted him by phone or by mail, and only received notice  
of the deficiencies when his broker showed him the amounts being withdrawn to satisfy the tax liabilities. (App. Reply Br.,  
p. 11.)

1                   Tax Year 2001

2                   Appellant did not file a timely California income tax return for tax year 2001.

3 Respondent issued a Demand for Tax Return (Demand) on January 21, 2003, indicating that it received  
4 information that appellant earned sufficient income to require a tax return and requested that appellant  
5 file a tax return by February 26, 2003. (Resp. Op. Br., p. 2 & exhibit G.) Respondent then issued a  
6 Notice of Proposed Assessment (NPA) on March 24, 2003, indicating that it did not receive a response  
7 to the Demand. (*Id.* at exhibit H.) Respondent used a total estimated income of \$127,123 based on  
8 Form 1099s and W2s from Smith Barney and PAYCHEX, Inc.<sup>5</sup> The 2001 NPA applied a standard  
9 deduction (\$2,960), exemption credits (\$79), and reported withholding credits (\$644) against the tax.  
10 The 2001 NPA thus proposed a tax liability of \$8,977.00, a late filing penalty of \$2,244.25, a demand  
11 penalty of \$2,405.25, a filing enforcement fee of \$108.00, and applicable interest. When appellant did  
12 not timely protest the NPA, it became final, due and payable on May 23, 2003. (*Ibid.*)

13                   Respondent pursued collection activities for the outstanding liability and imposed a \$101  
14 collection cost fee. (Resp. Op. Br., exhibit I, p. 2, line 10.) Respondent issued a Collection Information  
15 Notice on August 13, 2003. (*Id.* at exhibit J.) Respondent then issued a Notice of State Tax Lien on  
16 September 17, 2003, for both the 2000 and 2001 tax years, and imposed a lien fee of \$10. (*Id.* at exhibit  
17 I, p. 2, line 11.) Respondent's collection action resulted in a payment on the 2001 tax liability of  
18 \$15,367.42 on June 9, 2004, and \$88.31 on November 5, 2004. (*Id.* at p. 1, lines 3, 4.)

19                   Appellant filed his 2001 California tax return on October 15, 2006, reporting a California  
20 adjusted gross income of \$33,891 and a total tax of \$1,036. (Appeal Letter, exhibits; Resp. Op. Br.,  
21 exhibit F.) Respondent notes that it accepted this return and adjusted the late filing penalty to \$100 and  
22 demand penalty to \$259. (Resp. Op. Br., p. 3.) Respondent also imposed an underpayment of estimated  
23 tax penalty in the amount of \$10.04. This resulted in an overpayment of \$14,395.06. (*Id.* at exhibit I.)  
24 Appellant submitted a letter on August 14, 2008, requesting a refund for 2001. (Appeal Letter,  
25 exhibits.) Respondent determined that appellant's 2001 tax return was filed after the statute of  
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28 <sup>5</sup> Respondent's NPA reflects a W2 amount from PAYCHEX, Inc., of \$20,248; 1099 interest income from Smith Barney of  
\$531; 1099 dividend income from Smith Barney of \$2,221; and miscellaneous 1099 income from Smith Barney in the  
amounts of \$52,531, \$22,716, \$14,532, and \$14,344.

1 limitations had run for a claim for refund, and issued a letter on October 30, 2008, denying the claim for  
2 refund on those grounds. (*Ibid.*)

### 3 Contentions

#### 4 Appellant's Contentions

5 Appellant contends that his tax returns for 2000 and 2001 were filed late due to the fact  
6 that his mother was diagnosed with an illness (Alzheimer's) in 1999 and, as her power of attorney and  
7 health director, he became her caregiver at her home. (Appeal Letter, p. 2.) Appellant states that when  
8 he moved in with his mother he moved his possessions, including his documents containing tax relevant  
9 information, into storage. Appellant states that he moved into his sister's home in the summer of 2006  
10 and was then finally able to unpack and organize his tax documents, and complete his tax returns. (*Id.* at  
11 p. 3.) Appellant asserts that this situation caused his tax returns for 2000 and 2001 to be filed late.

12 Appellant contends that respondent has erroneously calculated his income and tax  
13 liabilities for 2000 and 2001. Appellant asserts that he paid all his taxes, penalties, interest, and late fees  
14 and is due the difference in a refund.<sup>6</sup> (Appeal Letter, p. 8.) Appellant notes that he filed his federal  
15 returns on the same date as his state returns, indicating that the Internal Revenue Service did not  
16 confiscate any money from his accounts prior to his returns being filed, and that he paid his tax liability,  
17 interest, penalties, and late filing fees and was thereby able to satisfy his liabilities without money being  
18 taken that was not owed. (*Id.* at p. 9.) Appellant contends that without a refund he is paying taxes on  
19 money he never received, which is ridiculous and not allowed by the California tax code. (*Id.* at p. 8.)

20 In appellant's supplemental briefing, he contends that he did not receive any of the mailed  
21 notices respondent indicates it sent to appellant at his address on Sparrow Avenue in Fountain Valley,  
22 including exhibits A through L accompanying respondent's opening brief. (App. Reply Br., p. 1.)  
23 Appellant indicates that, due to his mother's illness, he was not receiving all his mail and had to change  
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25 <sup>6</sup> Appellant contends that the payments made to the 2000 and 2001 accounts which were in excess of his true tax liability  
26 should have been applied to subsequent years, ultimately resulting in an overpayment of \$36,683 as shown on his 2005  
27 return. The years at issue here, however, are the 2000 and 2001 tax years. The amounts paid toward his 2000 and 2001 tax  
28 years were not applied by respondent to subsequent years because they were used to satisfy existing tax liabilities and were  
not considered excess payments by respondent until appellant filed his tax returns. Since appellant's returns were allegedly  
filed after the statute of limitations for a claim for refund for 2000 and 2001, respondent determined that the overpayments  
could not be refunded and therefore could not be applied to subsequent tax years.

1 his mailing address "years ago" to a new address on Brookhurst Street in Fountain Valley. (*Id.* at pp. 1-  
2 2.) Appellant contends that respondent should send anything of importance with confirmation or  
3 certified to ensure it is received, and requests that respondent brings these confirmations to the hearing.  
4 (*Id.* at p. 2.) Appellant reiterates his contentions that respondent has incorrectly calculated his taxable  
5 income and tax liability.

#### 6 Respondent's Contentions

7 Respondent contends that appellant's claims for refund are barred by the statute of  
8 limitations both under the four-year and one-year periods of limitation. (Resp. Op. Br., pp. 4-6.)  
9 Respondent also contends that it used appellant's last-known address to send all correspondences, and  
10 that therefore they constitute adequate notice. (Resp. Reply Br., p. 2.) Respondent asserts that appellant  
11 did not question the NPA's or prove that the assessments for 2000 and 2001 were erroneous until he  
12 filed his tax returns for those years on October 15, 2006. Respondent states that appellant should have  
13 protested the assessments within the proper time period indicated on the numerous notices sent to him,  
14 but that appellant failed to do so. (Resp. Op. Br., pp. 5-6.) Respondent asserts that appellant also failed  
15 to notify it of his new address when he moved. Respondent states that it became aware of the new  
16 address when it received returned mail from the U.S. Postal Service on June 14, 2006, and did not  
17 receive appellant's new address until he filed his 2000 and 2001 tax returns on October 15, 2006. (Resp.  
18 Reply Br., p. 2.)

#### 19 Applicable Law

##### 20 Statute of Limitations for a Claim for Refund

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

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

27 The language of the statute of limitations is explicit and must be strictly  
28 construed. (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) It is a taxpayer's  
responsibility to file a claim for refund within the timeframe prescribed by law. (*Appeal of Earl and*

1 *Marion Matthiessen*, 85-SBE-077, July 30, 1985.) Federal courts have stated that fixed deadlines may  
2 appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the  
3 clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-  
4 223 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241,  
5 249].)

#### 6 Last-Known Address

7 The Board has long recognized a presumption in favor of respondent arising from the  
8 “last-known address rule.” Under this rule, the Board presumes respondent’s mailing of a statutory  
9 notice to a taxpayer provides notice to the taxpayer of the tax due, so long as respondent mailed the  
10 notice to the taxpayer’s last-known address, even if the taxpayer did not actually receive the notice.  
11 (*Appeal of Yvonne M. Goodwin*, 97-SBE-003, Mar. 19, 1997; *Appeal of Jon W. and Antoinette O.*  
12 *Johnston*, 83-SBE-238, Oct. 26, 1983.) The taxpayer’s last-known address is the address shown on the  
13 taxpayer’s most recently filed return, unless respondent is given clear and concise notice of a different  
14 address. (*King v. Commissioner* (9th Cir. 1988) 857 F.2d 676, 679; *Wallin v. Commissioner* (9th Cir.  
15 1984) 744 F.2d 674, 676.) The purpose of this rule is to protect the taxing agency and the statutory  
16 scheme of assessment and appeal from a failure by the taxpayer to inform the taxing agency of a change  
17 in address. (*Delman v. Commissioner* (3rd Cir. 1967) 384 F.2d 929, 933.) The presumption in the last-  
18 known address rule in favor of respondent is not absolute. An appellant may overcome the presumption  
19 by proving by a preponderance of the evidence that respondent failed to send the required notices to  
20 appellant’s last-known address. (See Cal. Code Regs., tit. 18, § 5080; *Appeal of Saga Corporation*, 82-  
21 SBE-102, June 29, 1982.)

#### 22 STAFF COMMENTS

##### 23 Statute of Limitations

24 The statute of limitations for filing a claim for refund, as set forth above, is four years  
25 from the filing of a timely return, four years from the date the return was due, or one year from the  
26 overpayment. In this appeal, appellant concedes that his returns for tax years 2000 and 2001 were filed  
27 late. Therefore, the first option is not applicable here. The due date of the returns for tax years 2000 and  
28 2001 was April 15, 2001, and April 15, 2002, respectively. Therefore, under the second option, four

1 years from the due date of the return, the statute of limitations expired for tax year 2000 on April 15,  
2 2005, and for tax year 2001 on April 15, 2006. Under the third option, the statute of limitations expires  
3 one year from the date of overpayment. According to the facts as presented, appellant's last payment  
4 toward the 2000 tax year was made on March 10, 2003, and his last payment for the 2001 tax year was  
5 made on November 5, 2004. Therefore, it appears as though the statute of limitations under the third  
6 option expired on March 10, 2004, for the 2000 tax year and November 5, 2005, for the 2001 tax year.

7 The latest date for which appellant could file a claim for refund according to the facts  
8 presented here and the three options under the statute appears to be April 15, 2005, for tax year 2000,  
9 and April 15, 2006, for tax year 2001. Appellant's filing of his tax returns on October 15, 2006, appears  
10 to be his first attempt to claim a refund for the tax years at issue. Under this analysis, appellant's claims  
11 for refund should be barred by the statute of limitations.

12 Appellant describes in detail the hardships he encountered while taking care of his  
13 mother. However, each taxpayer has a personal, non-delegable obligation to file the tax return and make  
14 payment by the due date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985;  
15 *Appeal of Philip C. and Anne Berolzheimer*, 86-SBE-172, Nov. 19, 1986; Rev. & Tax. Code, § 18501.)  
16 Where a taxpayer chooses to sacrifice the timeliness of one aspect of his business affairs in order to  
17 more competently pursue other endeavors, he must bear the consequences of that choice. (*Appeal of*  
18 *William T. and Joy P. Orr*, 68-SBE-010, Feb. 5, 1968.) The only statutory exception to the statute of  
19 limitations is when the taxpayer himself suffers from a financial disability. Financial disability is  
20 defined as when an individual is unable to manage his own financial affairs by reason of a medically  
21 determinable physical or mental impairment that is either deemed to be a terminal impairment or is  
22 expected to last for a continuous period not less than twelve months; appellant has not indicated that he  
23 suffered from a financial disability. (See Rev. & Tax. Code, § 19316; *Appeal of James C. and Florence*  
24 *Meek*, 2006-SBE-001, Mar. 28, 2006.) Appellant should be prepared to make an argument supported by  
25 statutory and case law to show that he should be excused from missing the filing deadlines for his return  
26 and claim for refund.

#### 27 Accuracy of the Assessment

28 Staff notes that the assessment amounts are final and therefore not at issue in this appeal

1 unless the Board determines that part or all of the claims for refund were timely made. Appellant  
2 contends respondent erred in its tax liabilities based on estimated income amounts for 2000 and 2001.  
3 However, when appellant filed his tax returns, on October 15, 2006, respondent accepted appellant's  
4 adjusted gross income amounts and self-assessed tax liabilities, and adjusted any penalties and interest  
5 accordingly. Therefore, the amounts as shown on the NPA are no longer at issue.

6 Appellant appears to dispute to which year the \$20,000 payment should be applied. (See  
7 App. Reply Br., p. 5.) The payment was made on March 10, 2003. Since appellant did not file his 2000  
8 through 2003 returns until October 15, 2006, the only known tax liability that appellant had at the time  
9 of the payment was the 2000 liability from the NPA that went final on January 3, 2003. The 2001 tax  
10 liability did not become final and due until May 23, 2003. Based on this, and since appellant indicates  
11 in his appeal letter that he remitted the \$20,000 payment in response to receiving a call from respondent  
12 that said he owed a tax liability for that approximate amount (when the amount was received and applied  
13 to the 2000 tax year, it was \$68 shy of the amount then owed for 2000), it appears as though the \$20,000  
14 was sent in response to the 2000 tax liability, and not intended for any other year. Likewise, appellant  
15 contends that an amount of \$16,683 was paid in 2004 and that he reported it on his 2004 tax return since  
16 that is the year in which it was taken. (App. Reply Br., p. 11.) Respondent reported that it received  
17 \$16,011.42 through collection actions in 2004 to satisfy appellant's 2001 outstanding tax liability.  
18 (Resp. Op. Br., p. 3.) It appears as though the amounts collected in 2003 and 2004 were collected to  
19 satisfy the known 2000 and 2001 tax liabilities. Respondent should be prepared to discuss at the hearing  
20 its procedures for applying payments to specific tax years and the statutory basis for those procedures.

#### 21 Adequacy of the Mailed Notices

22 Appellant asserts that he never received any of the notices respondent sent regarding his  
23 2000 and 2001 tax liabilities until after he was made aware of the collection actions taken by respondent  
24 during 2004. Both parties state that all the notices at issue were sent to the Sparrow Avenue address, but  
25 appellant states that they should have been sent to the Brookhurst Street address, and that respondent  
26 should have taken further steps to ensure delivery (e.g. certified mail, confirmation, etc). However,  
27 appellant does not state that he notified respondent of his changed address. Applying the last-known  
28 address rule explained above, respondent's notices sent to the Sparrow Avenue address appear to be

1 sufficient notice as long as that address was the last-known address, whether appellant received the  
2 notices or not.

3 Appellant should be prepared to demonstrate that the Sparrow Avenue address was not  
4 the last-known address and that he notified respondent of the Brookhurst Street address prior to  
5 October 15, 2006, when he filed his 2000 and 2001 tax returns reporting a new address. Staff notes that  
6 appellant provided with his appeal letter a pair of letters from Smith Barney addressed to his Sparrow  
7 Avenue address on May 28, 2004, and October 28, 2004, which he apparently did receive. These dates  
8 are after the last mailed contact respondent has listed in the record prior to receiving appellant's returns,  
9 and the collection action which was paid toward appellant's 2001 tax liability was completed after the  
10 dates of these letters. Appellant should be prepared to explain how he received the Smith Barney letters  
11 but none of respondent's letters.

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