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

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11 In the Matter of the Appeal of:) **HEARING SUMMARY**
12) **PERSONAL INCOME TAX APPEAL**
13 **PAUL KATCHADOURIAN**¹) Case No. 451078

	<u>Years</u>	<u>Claim For Refund</u>
	1999	\$6,232.59 ²
	2000	\$544.75
	2002	\$9,139.64

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19 Representing the Parties:

20 For Appellant: Chris Cook, Tax Appeals Assistance Program (TAAP)³
21 For Franchise Tax Board: Delinda R. Tamagni, Tax Counsel

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25 ¹ Appellant resides in Fresno County.

26 ² Appellant requested a refund of \$6,244.00 on his 1999 return; however the exact amount of overpayment was \$6,232.59.
27 The \$11 difference is attributable to the tax lien collection fee.

28 ³ Another student participating in TAAP, Mark Menor, also filed a brief in this appeal.

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

3 HEARING SUMMARY

4 Background

5 1999 Tax Year

6 Appellant did not file a timely California income tax return for 1999. Respondent,
7 however, received information from the Employment Development Department (EDD) indicating that
8 appellant engaged in a local trucking business as a self-employed individual. Respondent used the
9 average income amount reported by individuals in appellant's type of industry to estimate appellant's
10 self-employment income, which was calculated at \$46,222. Additionally, \$11,465 of Form 1099 income
11 was reportedly paid to appellant in 1999. On June 15, 2001, respondent sent a letter to appellant,
12 demanding that he file a 1999 return or explain why no return was required. The demand letter was
13 mailed to appellant's last-known address in Fresno, California. Appellant did not reply to the demand
14 letter.

15 On October 18, 2001, respondent issued a Notice of Proposed Assessment (NPA) that
16 proposed to assess \$3,091.00 in tax, a \$772.75 late filing penalty, a \$772.75 demand penalty, a filing
17 enforcement cost recovery fee of \$109.00, and applicable interest. Appellant did not protest the NPA
18 and the assessment became final. Respondent thereafter began collection action, including a
19 withholding order and a tax lien of \$11. Respondent eventually collected the entire outstanding balance,
20 with the last payment being applied on March 15, 2005, for a total of \$6,243.59 collected.

21 Appellant filed a 1999 return on May 4, 2007. The return reported \$0 in income, tax
22 liability of \$0, and claimed an overpayment of \$6,244. Respondent denied a refund of the overpayment
23 because appellant filed his return after expiration of the statute of limitations for refund claims.

24 2000 Tax Year

25 Appellant did not file a timely California income tax return for 2000. Respondent,
26 however, received information from EDD indicating that appellant engaged in a local trucking business
27 as a self-employed individual. Respondent used the average income amount reported by individuals in
28 appellant's type of industry in 2000 to estimate appellant's self-employment income, which was

1 calculated at \$15,813. Additionally, \$2,240 of income reported on a Schedule K-1 was reportedly paid
2 to appellant in 2000. On May 6, 2002, respondent sent a letter to appellant, demanding that he file a
3 2000 return or explain why no return was required. The demand letter was mailed to a different address
4 in Fresno, California, from the 1999 tax year demand letter. The U.S. Postal Service returned the
5 demand letter to respondent on June 14, 2002. Respondent subsequently sent a letter to the address used
6 for the 1999 tax year demand letter on September 12, 2002. Appellant did not reply to the demand
7 letter.

8 On March 10, 2003, respondent issued a NPA that proposed to assess \$220 in tax, a \$100
9 late filing penalty, a \$55 demand penalty, a filing enforcement cost recovery fee of \$108, and applicable
10 interest. Appellant did not protest the NPA and the assessment became final. Respondent thereafter
11 began collection action. On October 3, 2003, respondent received a payment of \$544.75 and applied the
12 amount to appellant's 2000 tax assessment.

13 Appellant filed a 2000 return on May 4, 2007. The return reported \$0 in income, tax
14 liability of \$0, and claimed an overpayment of \$545. Respondent denied a refund of the overpayment
15 because appellant filed his return after expiration of the statute of limitations for refund claims.

16 2002 Tax Year

17 Appellant did not file a timely California income tax return for 2002. Respondent,
18 however, received information from EDD indicating that appellant engaged in a local trucking business
19 as a self-employed individual. Respondent used the average income amount reported by individuals in
20 appellant's type of industry to estimate appellant's self-employment income, which was calculated at
21 \$83,635. On December 29, 2003, respondent sent a letter to appellant, demanding that he file a 2002
22 return or explain why no return was required. The demand letter was mailed to appellant's last-known
23 address in Fresno, California. Appellant did not reply to the demand letter.

24 On March 8, 2004, respondent issued a NPA that proposed to assess \$5,541.00 in tax, a
25 \$1,385.25 late filing penalty, a \$1,385.25 demand penalty, a filing enforcement cost recovery fee of
26 \$108.00, and applicable interest. Appellant did not protest the NPA and the assessment became final.
27 Respondent eventually collected the entire outstanding balance, two payments totaling \$9,130.39 on
28 March 15, 2005 and \$9.25 from the 1998 tax year was applied to the assessment on April 29, 2005.

1 Appellant filed a 2002 return on May 4, 2007. The return reported \$0 in income, tax
2 liability of \$0, and claimed an overpayment of \$9,140. Respondent denied a refund of the overpayment
3 because appellant filed his return after expiration of the statute of limitations for refund claims. This
4 appeal followed.

5 Contentions

6 Appellant

7 Appellant claims these taxes were paid through escrow on the sale of his house.
8 Appellant explains that there were liens on his house for the tax years 1999, 2000, and 2001. Appellant
9 contends the liens were not based on money owed for previous years, rather they were an estimation
10 based on “payroll”. Additionally, appellant claims he is a California veteran.

11 Appellant contends he was not informed of the statute of limitations on refund claims.
12 Although appellant agrees he filed his tax returns late, he still contends respondent should grant him a
13 refund for the tax years at issue. Appellant argues it was unfair for respondent to notify him when tax
14 was assessed, and then fail to notify him when a refund was due.

15 Respondent

16 Respondent contends it has the constitutional authority to administer and enforce the
17 California Personal Income Tax Law, which includes the power to estimate a taxpayer’s income when
18 that taxpayer fails to file a return. Respondent contends it received information from EDD that appellant
19 was self-employed during the tax years at issue. Therefore, respondent argues it properly assessed tax
20 on appellant based on estimated income.

21 Respondent contends appellant has not provided evidence that respondent’s estimated
22 income assessment was in error. Respondent further contends appellant did not file his refund claims
23 within the statute of limitations, and therefore the claims cannot be allowed. Additionally, respondent
24 contends the law does not provide for the waiver of the statutory period based on reasonable cause
25 (*Appeal of Harry O. Nylén*, 82-SBE-225, Sept. 21, 1982); further, respondent is not obligated to inform
26 a taxpayer of the time within which a claim must be filed (*Appeal of Earl and Marion Matthiessen*, 85-
27 SBE-077, July 30, 1985 (*Matthiessen*)).

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1 Applicable Law

2 Estimated Income

3 R&TC section 19087 allows respondent to make an estimate of net income, from any
4 available information, and may propose to assess the amount of tax, interest, and penalties due.
5 Respondent may use information supplied by the EDD in estimating a taxpayer's net income. (*Appeals*
6 *of Walter R. Bailey*, 92-SBE-001, Feb. 20, 1992). Additionally, estimated net income can be based on a
7 finding of average income in the taxpayer's profession, as long as respondent can establish that this is a
8 reasonable assessment. Respondent is not required to verify whether the income was indeed actually
9 generated by the individual taxpayer. Respondent's determination of an assessment is presumed correct
10 and appellant has the burden of proving it to be wrong. (*Todd v. McColgan, supra; Appeal of Michael*
11 *E. Myers, supra; Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.) A taxpayer is not in a
12 good position to criticize respondent's estimate of his or her liability when he or she fails to file a
13 required return and subsequently refuses to submit information upon request. (*Appeals of Fred R.*
14 *Dauberger, et al*, 82-SBE-082, Mar. 31, 1982).

15 Penalties

16 California imposes a penalty for the failure to file a return on or before the due date,
17 unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (Rev. & Tax.
18 Code, § 19131.) To establish reasonable cause, the taxpayer "must show that the failure to file timely
19 returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as
20 would prompt an ordinary intelligent and prudent businessman to have so acted under similar
21 circumstances." (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) California also
22 imposes a penalty for the failure to file a return or provide information upon respondent's demand to do
23 so, unless reasonable cause prevented the taxpayer from responding to the request. The burden is on
24 appellant to prove reasonable cause prevented him from responding to the notice and demand. (*Appeal*
25 *of Kerry and Cheryl James*, 83-SBE-009, Jan. 3, 1983.)

26 Statute of Limitations

27 The relevant statute of limitations is set forth in R&TC section 19306. The statute
28 provides that the last day to file a claim for refund is the later of:

- 1 1. Four years from the date the return was filed, if filed within the extended due date
- 2 under R&TC section 18567;
- 3 2. Four years from the due date of the return, without regard to extensions; or
- 4 3. One year from the date of the overpayment.

5 The language of the statute of limitations is explicit and does not provide exceptions. (*Appeal of*
6 *Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) Further, the statute of limitations is “strictly
7 construed and . . . a taxpayer’s failure to file a claim for refund, for whatever reason, within the statutory
8 period bars him from doing so at a later date.” (*Mattheissen, supra.*) Federal courts have stated that
9 fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is
10 redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223
11 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

12 Respondent has no duty to inform taxpayers when to file a claim for refund.
13 (*Mattheissen, supra.*) Respondent does not have any obligation to notify appellants of an overpayment.
14 (*Appeal of Manuel and Ofelia Cervantes*, 74-SBE-029, Aug. 1, 1974.)

15 The Board has considered the doctrine of equitable tolling with respect to the statute of
16 limitations and held that, absent direction from the Legislature, the statute of limitations in section
17 19306 is not subject to equitable tolling. (*Appeal of Earl W. and Patricia A. McFeaters*, 94-SBE-012,
18 Nov. 30, 1994; see also *United States v. Brockamp* (1997) 519 U.S. 347.) Such authority is found in
19 R&TC section 19316, which allows the statute of limitations set forth in R&TC section 19306 to toll in
20 cases where the taxpayer can show he or she suffers from financial disability. An individual taxpayer is
21 “financially disabled” if “that individual taxpayer is unable to manage his or her financial affairs by
22 reason of a medically determinable physical or mental impairment that is either deemed to be a terminal
23 impairment or is expected to last for a continuous period of not less than 12 months.” Additionally, a
24 taxpayer cannot be “financially disabled” for any period during which that taxpayer had a spouse or any
25 other person legally authorized to act on that individual’s behalf in financial matters.

26 STAFF COMMENTS

27 In order for appellant’s claim for refund for 1999 to be timely filed within the statute of
28 limitations, appellant must have filed the claim by March 15, 2006 (appellant did not file his claims for

1 refund for each appeal year until May 4, 2007).⁴ In order for appellant's claim for refund for 2000 to be
2 timely filed within the statute of limitations, appellant must have filed the claim by April 15, 2005.⁵
3 And lastly, in order for appellant's claim for refund for 2002 to be timely filed within the statute of
4 limitations, appellant must have filed the claim by April 15, 2007.⁶ Respondent did not receive the
5 refund claims until May 4, 2007, which falls beyond the deadline for all tax years at issue. Unless
6 appellant can demonstrate "financial disability" at the oral hearing with respect to any of the appeal
7 years, it appears that respondent properly denied the refund claims.

8 In the event the Board finds some or all of the claims for refund to be tolled for financial
9 disability, and timely, appellant should be prepared to demonstrate why the estimated income amounts
10 are in error and whether he had reasonable cause for abatement of the penalties. FTB should be
11 prepared to discuss the changes in the industry standard income amounts during the appeal years and
12 whether it included the 1099 and K-1 income in its estimated income calculations or added those
13 amounts to its estimated income calculations.

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24 ⁴ The deadline for 1999 tax returns was April 15, 2000 and appellant paid the tax on March 15, 2005. Therefore, appellant
25 had until the later of four years after the due date for filing (April 15, 2004) or one year after the date of overpayment
26 (March 15, 2006) to file a 1999 refund claim.

27 ⁵ The deadline for 2000 tax returns was April 15, 2001 and appellant paid the tax on October 3, 2003. Therefore, appellant
28 had until the later of four years after the due date for filing (April 15, 2005) or one year after the date of overpayment
(October 3, 2004) to file a 2000 refund claim.

⁶ The deadline for 2002 tax returns was April 15, 2003 and appellant paid the tax on April 29, 2005. Therefore, appellant had
until the later of four years after the due date for filing (April 15, 2007) or one year after the date of overpayment (April 29,
2006) to file a 2002 refund claim.