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BOARD OF EQUALIZATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:) **HEARING SUMMARY²**
) **PERSONAL INCOME TAX APPEAL³**
CONNIE S. RAY¹) Case No. 418262

| | | |
|--|-------------|---|
| | <u>Year</u> | <u>Proposed Assessment⁴</u> |
| | 2003 | <u>Tax</u> <u>Penalty⁵</u> \$1,031.35 \$256.72 |

Representing the Parties:

For Appellant: Emily Foehr, TAAP⁶

¹ Appellant resides in Fresno, California.

² The hearing summary was previously revised to reflect the following corrections: (1) the Notice of Proposed Assessment proposes additional tax of \$1,031.35, which includes an early pension distribution tax of \$395.35; and (2) the Notice of Action includes the early pension distribution tax of \$395.35. These changes are reflected on page 3 of the revised hearing summary.

³ This appeal was postponed from the May 27, 2009, hearing calendar and rescheduled to the August 31, 2009, hearing calendar to allow appellant time to submit documents outlined in the hearing summary. It was later postponed from the August 31, 2009, hearing calendar and rescheduled to the November 17, 2009, hearing calendar to allow additional time for appellant to submit essential documents for her case.

⁴ Respondent should be prepared to provide interest calculations at the hearing.

⁵ The penalty is a late-filing penalty.

⁶ Appellant submitted the appeal letter. Mark Menor, a member of the Tax Appeals Assistance Program (TAAP), submitted appellant's reply brief. Emily Foehr represents the taxpayer at the time of this decision.

1 For Franchise Tax Board: Joanne A. Garcia, Senior Legal Analyst
2

- 3 QUESTIONS: (1) Whether appellant has demonstrated error in the proposed assessment.
4 (2) Whether appellant has shown reasonable cause to abate the late filing penalty.
5 (3) Whether respondent properly determined not to abate interest.

6 HEARING SUMMARY

7 Background

8 Appellant did not file a 2003 return. (Resp. Opening Br., p.1.) On June 13, 2005,
9 respondent sent a notice and demand letter to appellant, informing her that it received information
10 indicating that she may be required to file a return for tax year 2003. In the notice and demand letter,
11 respondent requested that appellant file the 2003 return, provide a copy of any filed return or explain
12 why she was not required to file the return. (Resp. Opening Brief, Exhibit A.)

13 Respondent did not receive a response from appellant. Respondent issued a Notice of
14 Proposed Assessment (NPA) on August 1, 2005, based on its available income information for
15 appellant, proposing to assess a total tax liability of \$654.00 and a late filing penalty of \$163.50, plus
16 applicable interest. (Resp. Opening Br., Exhibit B.) Appellant did not protest the NPA, and the
17 proposed assessment went final.⁷ Respondent then sent a Statement of Tax Due Notice to appellant on
18 or about October 25, 2005. (Resp. Opening Br., Exhibit C, line 5.) Pursuant to its normal collection
19 procedures, respondent issued additional billing notices on December 13, 2005, and January 27, 2006.
20 (Resp. Opening Br., Exhibit D.) On March 1, 2006, it imposed a collection cost recovery fee of \$101.
21 (Resp. Opening Br., Exhibit C, line 6.) On August 25, 2006, it also issued an order to El Dorado
22 Savings Bank to withhold from appellant's accounts personal income tax in the amount of \$1,019.09.
23 (Resp. Opening Br., Exhibit E.)

24 On September 13, 2006, appellant filed her 2003 return, reporting federal adjusted gross
25 income (AGI) of \$32,790.93, California income adjustments of \$20,444.09, and itemized deductions of
26 \$21,309.86, for a reported taxable income of zero, a total tax liability of zero, and an overpayment of
27

28 ⁷ Respondent sent the NPA to the same address listed on the notice and demand letter.

1 \$4.47. On the return, appellant requested that respondent apply the overpayment to her 2004 estimated
2 tax. (Resp. Opening Br., Exhibit G.) Respondent accepted appellant's reported tax liability of zero and
3 cancelled the 2003 assessed tax, late filing penalty, and interest.

4 On September 19, 2006, respondent issued a release of its order to El Dorado Savings
5 Bank to withhold personal income tax in the amount of \$1,019.09. (Resp. Opening Br., Exhibit F.) The
6 bank thereafter released the hold on appellant's account and did not remit any of appellant's money to
7 respondent.

8 Respondent subsequently reviewed the return and sent appellant a letter dated October 3,
9 2006, requesting a complete copy of appellant's 2003 federal return, including the federal Schedule A,
10 and documentation to support the claimed itemized deductions by no later than November 3, 2006. The
11 October 3, 2006, letter also advised appellant that respondent was proposing to add the reported pension
12 income to her California AGI and to assess a penalty tax on premature distributions. (Resp. Opening
13 Br., Exhibit H.) When appellant did not respond, respondent sent another letter dated November 14,
14 2006, requesting the information by December 12, 2006. (Resp. Opening Br., Exhibit I.)

15 After appellant again did not provide the requested information, respondent issued a
16 second NPA on December 28, 2006, which increased reported taxable income by \$15,836.09 of pension
17 income, disallowed itemized deductions of \$21,309.86, and allowed a standard deduction of \$3,070.00
18 for a revised taxable income of \$25,112.93.⁸ The NPA proposes additional tax of \$1,031.35, including
19 an early pension distribution tax of \$395.35, and imposes a late filing penalty of \$256.72, plus
20 applicable interest. (Resp. Opening Br., Exhibit J.) Appellant protested the NPA. During a subsequent
21 exchange of correspondence, appellant submitted copies of her 2003 federal return and Schedule A.
22 (Resp. Opening Br., Exhibit O.) Respondent issued a Notice of Action (NOA) affirming the NPA with
23 respect to the additional tax of \$1,031.35 and the late filing penalty of \$256.72; the additional tax of
24 \$1,031.35 includes the early pension distribution tax of \$395.35. (Resp. Opening Br., Exhibit N.)
25 Appellant thereafter filed this timely appeal.

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27
28 ⁸ The \$21,309.86 of disallowed itemized deductions apparently consist of medical and dental expenses of \$1,848.88, gifts to
charity of \$1,134, and unreimbursed employee expenses of \$18,326.98. As discussed below, appellant apparently did not
claim on her 2003 California return an itemized deduction of \$12,850 for the casualty or theft loss of a truck, which she
claimed on her 2003 federal return.

1 Appellant's Contentions

2 Appellant contends that respondent's proposed assessment was made in error and that
3 respondent previously conceded that she had a zero tax liability. In her protest letter dated February 22,
4 2007, appellant contends that respondent improperly included non-California source income in her
5 California taxable income, overstated her California source income, and improperly claims that the
6 funds she withdrew from the California State Teacher Retirement System in the amount of \$15,836.09
7 were not California pension and annuities. Appellant also contends that respondent "emptied" her
8 checking and savings accounts, even though it acknowledged that she had a zero tax liability for 2003.
9 Appellant asserts that respondent restored the money to her accounts on September 19, 2006, after
10 appellant complained to United States Senator Barbara Boxer. Appellant argues that respondent
11 confirmed her zero tax liability for 2003 in response to her letter dated September 11, 2006, and in its
12 notice dated October 2, 2006. Appellant contends that respondent reconfirmed her 2003 zero tax
13 liability several times after it sent her a notice dated October 3, 2006, requesting a copy of her 2003
14 federal return and Schedule A, plus documentation supporting the claimed itemized deductions.

15 Appellant contends that respondent has made unreasonable demands as a condition for
16 allowing her claimed itemized deductions, such as requiring her to produce the fair market value of the
17 truck immediately prior to the casualty or theft based on the written opinion of a qualified independent
18 appraiser. According to appellant, she would have to be clairvoyant to have obtained a written appraisal
19 of the vehicle prior to the incident. In addition, appellant contends that respondent has already verified
20 the locations, mileage and dates of her temporary employment. Appellant asserts that it should be
21 obvious to respondent that she would incur travel, food and lodging expenses while working away from
22 her regular home.

23 Appellant further contends in her opening brief that respondent "claimed California
24 residents such as myself have no constitutional rights, that we are guilty of each and every false
25 allegation [respondent] cannot substantiate until we prove our innocence[,] if California residents such
26 as myself are required by [respondent] to hire a tax attorney to prove our innocence and prevail (if we
27 are fortunate enough to have the financial means to do so,) [respondent] is not required to pay any
28 attorney fees and that California residents are not permitted to deduct the costs of defending themselves

1 against taxpayer abuse.”

2 Lastly, appellant argues in her final brief that the late filing penalty should be abated on
3 the ground that she had reasonable cause to file a late return due to her medical problems. Appellant
4 contends she has been in medical and financial crisis and had been medically disabled since November
5 2005. She submitted various supporting documents from medical providers dated February 11, 1999,
6 December 21, 1999, May 25, 2000, February 20, 2004, January 23, 2006, June 21, 2006, June 28, 2006,
7 and August 27, 2006. (App. Reply Br., attachments.) She again reiterates that she should not owe any
8 amount of tax due to the fact that respondent claimed she had a zero liability. Appellant does not appear
9 to address the issue of interest abatement, which is raised by respondent.

10 Respondent’s Contentions

11 Respondent contends that it cancelled the first 2003 NPA and the \$101 collection cost fee
12 after appellant filed a late return, reporting a zero tax liability, which resulted in a zero balance due on
13 the 2003 account. Respondent asserts that the first NPA is therefore not at issue.

14 Respondent contends that it properly disallowed the claimed itemized deductions for
15 casualty loss and unreimbursed employee business expenses in the December 28, 2006 NPA, because
16 appellant repeatedly failed to provide the requested supporting documentation. Respondent contends
17 that appellant was subject to tax on the pension distribution of \$15,836.09 from the State Teachers’
18 Retirement System. Respondent contends that appellant improperly listed this item under California
19 Income Adjustments on her return and thus subtracted this amount from her taxable income.
20 Respondent argues that appellant’s pension income should not be subtracted from her federal AGI, since
21 there should not be any difference in the taxable amount reported on her federal and California returns.
22 Respondent further contends that the reported pension income is subject to a 2.5 percent tax, because it
23 was an early distribution, as evident by the 2003 State Teachers’ Retirement System 1099-R form.

24 (Resp. Opening Br., Exhibit P.)

25 Respondent contends that the late filing penalty was properly imposed as required by law
26 and appellant has not presented evidence of reasonable cause for late filing to support abatement of the
27 penalty. In addition, respondent contends that the imposition of interest on the assessment is mandatory
28 and it is not allowed to abate interest, except as authorized by law. Respondent further contends that

1 none of the exceptions authorized by law are present in this appeal.

2 Applicable Law

3 Burden of Proof

4 Respondent's initial burden is to show why its assessment is reasonable and rational.
5 (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Thereafter, respondent's determination of an
6 assessment is presumed correct, and appellant has the burden of proving it to be wrong. (*Todd v.*
7 *McColgan, supra.*) Unsupported assertions are not sufficient to satisfy appellant's burden of proof.
8 (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) In the absence of uncontradicted,
9 credible, competent, and relevant evidence showing error in respondent's determinations, they must be
10 upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) An appellant's
11 failure to produce evidence that is within his or her control gives rise to a presumption that such
12 evidence is unfavorable to his or her case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

13 Pension and Annuity Income

14 Revenue & Taxation Code (R&TC) section 17501 conforms California law to Internal
15 Revenue Code (IRC) section 402 concerning the taxation of pension distributions. IRC section 402(a)
16 provides that any amount actually distributed from a qualified pension shall be taxed to the "distributee"
17 as provided by the annuity rules in IRC section 72. IRC section 72 requires that gross income include
18 any amount received in an annuity or under an annuity, endowment or life insurance contract. A
19 pension, such as an ESOP or 401k account, falls within that definition. To avoid double taxation, IRC
20 section 72(a) allows a portion of a distribution to be excluded from gross income to the extent such
21 portion represents the distributee's "investment in the contract." Generally, the investment in the
22 contract is the amount of contributions made to the pension that was included in the taxpayer's taxable
23 income, and on which the taxpayer already paid tax. This is the taxpayer's "basis" in the pension, and
24 just as in other tax contexts, a return of basis is generally not taxed.

25 IRC section 72(t)(1) imposes, with certain exceptions set forth in IRC section 72(t)(2), a
26 10 percent tax (in addition to income taxes otherwise imposed) on early distributions from qualified
27 retirement plans, which is includible in gross income. R&TC section 17085, subdivision (c)(1), adopts
28 and modifies IRC section 72(t)(1), in that it reduces the additional tax (hereinafter referred to as penalty)

1 from 10 percent to 2.5 percent.

2 Itemized Deductions

3 IRC section 62 provides that AGI is computed by reducing a taxpayer's gross income by
4 any available deductions listed under that section. R&TC section 17076 incorporates IRC section 67
5 and requires that all miscellaneous deductions (such as casualty loss, unreimbursed employee expenses,
6 and charitable deductions) exceed two percent of AGI. Also, R&TC section 17201 incorporates IRC
7 section 213 and requires that all medical itemized deductions exceed seven and one-half percent of AGI.
8 Respondent's denials of deductions are presumed correct. (*Appeal of Gilbert W. Janke*, 80-SBE-059,
9 May 21, 1980.) In order to carry their burden of proof, appellants must point to an applicable statute and
10 show by credible evidence that the deductions they claim come within its terms. (*Appeal of Robert R.*
11 *Telles*, 86-SBE-061, Mar. 4, 1986.) Income tax deductions are a matter of legislative grace and
12 appellants have the burden of proving that they are entitled to the deductions that they claim. (*Appeal of*
13 *James C. and Monablanch A. Walshe*, 75-SBE-073, Oct. 20, 1975; *New Colonial Ice Co. v. Helvering*
14 (1934) 292 U.S. 435, 436.)

15 Late Filing Penalty

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 Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Howard G.*
22 *and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) The taxpayer must provide credible and competent
23 evidence to support the claim of reasonable cause; otherwise the penalties will not be abated. (*Appeal of*
24 *James C. and Monablanch A. Walshe*, 75-SBE-073, Oct. 20, 1975.) Illness may constitute reasonable
25 cause if it prevented the taxpayer from filing a timely return. (*Appeal of Allen L. and Jacqueline M.*
26 *Seaman*, 75-SBE-080, Dec. 16, 1975.)

27 Interest

28 The imposition of interest is mandatory. (*Appeal of Amy M. Yamachi*, 77-SBE-095,

1 June 28, 1977; *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) If a taxpayer fails to pay tax
2 by the due date, or if respondent assesses additional tax, the law imposes interest on the balance due.
3 (Rev. & Tax. Code, § 19101.) Interest is not a penalty but is simply compensation for a taxpayer's use
4 of money after the due date of the tax. (*Appeal of Audrey C. Jaegle, supra.*) There is no reasonable
5 cause exception to the imposition of interest. (*Ibid.*) Interest is also mandatory with respect to the
6 imposition of a failure to file penalty, a failure to pay penalty, or an accuracy-related penalty pursuant to
7 R&TC sections 19131, 19132, and 19164, respectively. (Rev. & Tax. Code, § 19101, subd. (c)(2)(B).)

8 In order to obtain interest abatement, appellant must qualify under one of the following
9 three statutes: R&TC sections 19104, 19112 or 21012. R&TC section 21012 is not applicable here
10 because there has been no reliance on any written advice requested of respondent. R&TC section 19112
11 requires a showing of extreme financial hardship caused by significant disability or other catastrophic
12 circumstance, which appellant has not alleged. R&TC section 19112 provides that interest "may" be
13 waived for any period for which the FTB determines that an individual "demonstrates inability to pay
14 that interest solely because of extreme financial hardship caused by significant disability or other
15 catastrophic circumstance." Unlike R&TC section 19104, which provides for Board review of the
16 FTB's determination, R&TC section 19112 does not give the Board jurisdiction to consider whether the
17 FTB abused its discretion by failing to abate interest under the authority provided by R&TC section
18 19112.

19 Under the provisions of R&TC section 19104, respondent may abate all or a part of any
20 interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable
21 error or delay committed by respondent in the performance of a ministerial or managerial act. (Rev. &
22 Tax. Code, § 19104, subd. (a)(1).) Further, an error or delay can only be considered when no significant
23 aspect of the error or delay is attributable to appellant and after respondent has contacted appellant in
24 writing with respect to the deficiency or payment. (Rev. & Tax. Code, § 19104, subd. (b)(1).)

25 In the *Appeal of Michael and Sonia Kishner*, 99-SBE-007, decided on September 29,
26 1999, this Board adopted the language from Treasury Regulation section 301.6404-2(b)(2), defining a
27 "ministerial act" as:

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1 [A] procedural or mechanical act that does not involve the exercise of
2 judgment or discretion, and that occurs during the processing of a
3 taxpayer's case after all prerequisites to the act, such as conferences and
4 review by supervisors, have taken place. A decision concerning the
5 proper application of federal tax law (or other federal or state law) is not a
6 ministerial act.

7 This Board has not yet adopted a definition for the term "managerial act." However,
8 when a California statute is substantially identical to a federal statute (such as with the interest
9 abatement statute in this case),⁹ we may consider federal law interpreting the federal statute as highly
10 persuasive. (*Appeal of Michael and Sonia Kishner, supra*, (citing *Douglas v. State of California* (1942)
11 48 Cal.App.2d 835.)) In this regard, Treasury Regulation section 301.6404-2(b)(1) defines a
12 "managerial act" as:

13 [A]n administrative act that occurs during the processing of a taxpayer's
14 case involving the temporary or permanent loss of records or the exercise
15 of judgment or discretion relating to management of personnel. A
16 decision concerning the proper application of federal tax law (or other
17 federal or state law) is not a managerial act.

18 Respondent's determination not to abate interest is presumed correct, and the burden is
19 on appellant to prove error. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) When
20 respondent denies a request for interest abatement, the Board has jurisdiction to review respondent's
21 denial for abuse of discretion. (Rev. & Tax. Code, § 19104, subd. (b)(2)(B); *Appeal of Ernest J.*
22 *Teichert*, 99-SBE-006, Sept. 29, 1999.) In such cases, a taxpayer's burden of proof is to show by clear
23 and convincing evidence that such abuse of discretion occurred. (See *Appeal of Royal Crown Cola Co.*,
24 74-SBE-047, Nov. 12, 1974; *Appeal of Browning Manufacturing Co. et al.*, 72-SBE-026, Sept. 14,
25 1972.) To show an abuse of discretion, appellant must establish that in refusing to abate interest
26 respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law by
27 refusing to abate interest. (*Woodral v. Commissioner* (1999) 112 T.C. 19, 23.) Interest abatement
28 provisions are not intended to be routinely used to avoid the payment of interest, thus abatement should
be ordered only "where failure to abate interest would be widely perceived as grossly unfair." (*Lee v.*
Commissioner (1999) 113 T.C. 145, 149.) The mere passage of time does not establish error or delay

⁹ R&TC section 19104, subdivisions (a) and (b)(2)(B), are substantially identical to IRC section 6404 (e) and (h).

1 that can be the basis of an abatement of interest. (*Id.* at p. 150.)

2 STAFF COMMENTS

3 It appears that respondent relied on the State Teacher's Retirement System 1099-R when
4 it increased appellant's taxable income by \$15,836.09 in the December 28, 2006, NPA. The State
5 Teacher's Retirement System 1099-R shows an early distribution of \$15,836.09 with no known
6 exception (Box 7, Distribution Code 1). (Resp. Opening Br., exhibit P.) Respondent's use of that
7 income information appears to be reasonable and rational, and appellant has thus far failed to show that
8 the information on the 1099-R is in error.

9 Next, the parties should be prepared to discuss whether respondent properly disallowed
10 appellant's 2003 claimed itemized deductions of \$21,809.86. Staff notes that appellant claimed \$12,850
11 fewer itemized deductions on the California return than on the federal return (\$34,159.86 - \$21,309.86),
12 which is the exact amount listed on the federal return for the casualty or theft loss of a truck. As stated
13 on Schedule A, the claimed itemized deductions on the federal return consist of \$12,850.00 for the
14 casualty or theft loss of a truck, medical and dental expenses of \$1,848.88, gifts to charity of \$1,134.00,
15 and unreimbursed employee expenses of \$18,326.98. It thus appears that on her California return,
16 appellant claimed all of the federal claimed itemized deductions, except for the \$12,850 for casualty or
17 theft loss of a truck. Accordingly, it appears that the only claimed itemized deductions in dispute are the
18 medical and dental expenses of \$1,848.88, gifts to charity of \$1,134.00, and unreimbursed employee
19 expenses of \$18,326.98. Respondent contends, however, that it properly disallowed the claimed
20 itemized deduction of \$12,850 for the casualty or theft loss of a truck and appellant contends that she is
21 entitled to it.

22 Staff further notes that respondent has not addressed the claimed medical and dental
23 expenses or the gifts to charity, both of which appear to be disallowed on the December 28, 2006, NPA,
24 for the reason discussed above. Respondent first requested further information concerning the casualty
25 and theft loss of \$12,850.00, as well as the unreimbursed employee expenses of \$18,982.80, in a letter
26 dated March 5, 2007. It appears that respondent did not specifically request supporting documentation
27 for the claimed medical and dental expenses or the gifts to charity, which were apparently disallowed in
28 the NPA. At the hearing, respondent should be prepared to clarify which claimed itemized deductions

1 are disallowed based on the December 28, 2006 NPA and NOA. Appellant may wish to explain why
2 she claimed different amounts of itemized deductions on her federal and California returns. Appellant
3 should also be prepared to provide the Board and respondent documents supporting her claimed
4 itemized deductions for the medical and dental expenses and gifts to charity at least 14 days prior to the
5 hearing.¹⁰

6 To the extent that appellant is making, or wishes to make, constitutional arguments, those
7 arguments may be made in the appropriate court of law or to the California Legislature. The Board is
8 precluded from determining the constitutional validity of California statutes, and has an established
9 policy of declining to consider constitutional issues. (Cal. Const., art. III, § 3.5; *Appeal of Aimor Corp.*,
10 83-SBE-221, Oct. 26, 1983; *Appeals of Walter R. Bailey*, 92-SBE-001, Feb. 20, 1992 (*Bailey*)).

11 Furthermore, the Board held in *Bailey* as follows:

12 [D]ue process is satisfied with respect to tax matters so long as an
13 opportunity is given to question the validity of a tax at some stage of the
14 proceedings. It has long been held that more summary proceedings are
permitted in the field of taxation because taxes are the lifeblood of
government and their prompt collection is critical. [Citations omitted.]

15 Furthermore, this Board has determined that a taxpayer's disagreement with the law should be directed
16 to the Legislature, which is charged with formulating the law, rather than to those who are charged with
17 enforcing the law as it is written. (*Appeal of Thomas C. and Donna G. Albertson*, 84-SBE-002, Jan. 17,
18 1984; *Appeal of Chester A. Rowland*, 75-SBE-071, Oct. 21, 1975; *Appeal of Samuel R. and Eleanor H.*
19 *Walker*, 73-SBE-020, Mar. 27, 1973.)

20 Next, to the extent that appellant may be arguing that respondent is barred from assessing
21 additional tax after confirming that she had a zero tax liability, staff notes that respondent timely issued
22 the second NPA within four years of the date appellant filed her 2003 return.¹¹ Respondent is not
23 otherwise barred from issuing a subsequent proposed assessment for the same year so long as the
24 issuance is made within the statute of limitations. In addition, the Board has held that reliance on
25 informal opinions of respondent's employees does not create estoppel against respondent. (*Appeal of*
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27 ¹⁰ Exhibits should be submitted to: Claudia Madrigal, Board Proceedings Division, Board of Equalization. P. O. Box 942879
28 MIC: 80, Sacramento, CA 94279-0081

¹¹ See R&TC section 19057.

1 *Virgil E. and Izora Gamble*, 76-SBE-053, May 4, 1976; *Appeal of Mary M. Goforth*, 80-SBE-158,
2 Dec. 9, 1980.) Similarly, the Board has consistently refused to invoke the doctrine when taxpayers have
3 understated their tax liability on tax returns in alleged reliance on erroneous information provided by
4 FTB employees. (*Appeal of Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991; *Appeal of*
5 *Harry H. and Alice P. Freer*, 84-SBE-127, Sept. 12, 1984.)

6 In addition, the parties should be prepared to discuss whether the late filing penalty was
7 properly imposed and whether reasonable cause for abatement exists. Staff notes that none of the
8 supporting medical documentation appellant submitted to demonstrate reasonable cause for her late
9 filing specifically addresses her medical condition on or about the time the 2003 return was due on
10 April 15, 2004. Appellant may want to provide the Board and respondent medical documentation that
11 specifically supports her contention that she was not able to file a timely 2003 return due to her medical
12 condition at the time her return was due.

13 Finally, appellant should also be prepared to discuss whether she contests the imposition
14 of interest and, if so, the reasons she is entitled to interest abatement. In the event that appellant was
15 unable to pay the interest due on her 2003 tax liability due to “extreme financial hardship caused by
16 significant disability or other catastrophic circumstances,” she should present such evidence to the Board
17 and respondent prior to the hearing. (R&TC § 19112.) The parties should be prepared to discuss
18 whether the Board has jurisdiction to consider interest abatement under R&TC section 19112.

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