



State of California
Franchise Tax Board

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Date: 04.17.14

Case: 19980522496315500
 Case Unit: 19980522496315526
 In reply refer to 410:SQN

TO: CHIEF, BOARD PROCEEDINGS DIVISION
 STATE BOARD OF EQUALIZATION
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STATE BOARD OF EQUALIZATION



Appeal Name: Phillip E. Zepp
 Case ID: 710837, ITEM # B3 728324, 741880
 Date: 4.22.14 Exhibit No: 4.6
 TP **(FTB) DEPT PUBLIC COMMENT**

FROM: Q. SAMANTHA NGUYEN

RE: Appeal of Phillip E. Zepp
 Appeal Case ID Nos. 710837, 728324, 741880
 Correction to Opening Brief

MEMORANDUM

Respondent hereby amends and corrects its opening brief filed with your Board on October 16, 2013.

In respondent's opening brief, respondent indicated that it had inadvertently sent appellant a bill for the 2009 tax year, even though appellant had protested the liability and it was not final. Upon receipt of the payment, respondent returned the amounts appellant paid in error, along with allowed interest. In respondent's opening brief, respondent treated the return of the payment to appellant as an erroneous refund under Rev. & Tax. Code section 19368. Because respondent characterized the return of the payment as an erroneous refund, respondent further indicated that if appellant remitted the amount that respondent returned to him within 30 days from the date of the opening brief, respondent would not charge interest from the date respondent returned the payment to appellant pursuant to Rev. & Tax. Code section 19104(c). The opening brief indicated that respondent would not abate interest if appellant failed to repay the amount by November 15, 2013 (30 days from the date of respondent's opening brief, which was the notice and demand for the return of the "erroneous refund").

Upon further review of this matter, respondent should not have treated the return of the payment as an erroneous refund under Rev. & Tax. Code section 19368 because section 19368 contemplates only final liabilities and the liability before your Board in this matter is pending. Also, the abatement of interest should not have been pledged under Rev. & Tax. Code section 19104(c) or contingent upon appellant returning the payment within 30 days from the date of respondent's opening brief.

FTB EXHIBITS

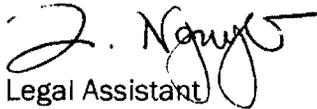
B3
April 22, 2014
Phillip E. Zepp
710837, 728324, 741880

Date : 04.17.14
Appeal Name : Phillip E. Zepp
Appeal Case ID No. : 710837, 728324, 741880
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In any event, under Rev. & Tax. Code section 19104(a), appellant is entitled to the abatement of interest for the specified time period, due to a ministerial error on the part of respondent in erroneously returning amounts that appellant submitted to satisfy the proposed assessment for the 2009 tax year. Under section 19104(a), respondent will abate interest for the time period beginning March 18, 2013 (when respondent returned the money to appellant) to November 15, 2013 (30 days from the date respondent first informed appellant of its error in its opening brief dated October 16, 2013). Thus, respondent will abate interest in the amount of \$18.43. Moreover, contrary to respondent's opening brief, respondent will abate the interest even though appellant failed to resubmit the payment by November 15, 2013.

Appellant has not resubmitted the amount erroneously returned of \$915.33 for the 2009 tax year, and interest began accruing on that amount from November 16, 2013, and will continue to accrue until it is fully paid, assuming respondent prevails here.

Accordingly, after taking into account the abatement of interest, appellant will owe tax of \$826 and interest of \$101.24 for the 2009 tax year as of the date of the hearing on April 22, 2014.


Legal Assistant

cc: Phillip E. Zepp