



State of California
Franchise Tax Board

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Date: 10.08.14 Case: 8080494067434936
Case Unit: 8080494067434940
In reply refer to 410:EAY

TO: CHIEF, BOARD PROCEEDINGS DIVISION
STATE BOARD OF EQUALIZATION
450 N STREET, MIC: 81
SACRAMENTO, CA 95814

FROM: ERIC A. YADAO

RE: Appeal of Rob & Raya Zakir
Appeal Case ID No. 624832
Additional Exhibits for October 14, 2014 Hearing

MEMORANDUM

Attached as additional exhibits is a copy of a letter sent by the appellants to the Internal Revenue Service dated June 8, 2010 (Exhibit K), and a copy of email correspondence between the appellant and respondent dated June 11, 2014. (Exhibit L.)


Tax Counsel

cc: George Chelius
Craig Shaltes

STATE BOARD OF EQUALIZATION



Appeal Name: Rob & Raya Zakir
Case ID: 624832 ITEM #: B1
Date: 10.14.14 Exhibit No: 10.2
TP **FTB** DEPT PUBLIC COMMENT

FTB EXHIBIT
B1
October 14, 2014
Rob Zakir and Raya Zakir
624832

June 8, 2010

Internal Revenue Service
PO BOX 309011, AMC 8228
Memphis, TN 37501-0001

Re: Rob M & Raya H Zakir

SSN: [REDACTED]

Form: 1040 Tax Year: 2007

To whom it may concern:

This letter is in regards to the examination report received on May 24, 2010 regarding changes to our 2007 Income tax return. After reviewing the report, we disagree with the proposed changes.

The Home Interest Expense incurred during year 2007 amounts to \$99,801 (see forms 1098 attached) as reported on the tax return. The brake down of this interest is a follow:

- Country Wide - \$57,157
- Bank of America - \$33,077
- Wells Fargo - \$9,567

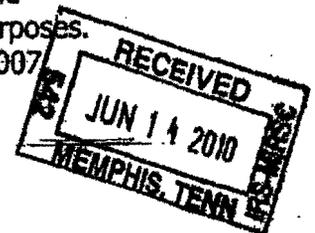
When we originally purchased our home, we obtained a loan with Country Wide for \$1,000,000; the full \$1,000,000 was used to purchase the home. We had a negative amortization loan with Country Wide. Each month, part of the interest was added to our principal. We refinanced this loan with Bank of America on 05/09/2007. On this date, the loan balance was \$1,035,513; the \$35,513 was interest that had been added to the original loan. When the loan was refinanced, the \$35,513 in interest was paid in full, bringing our interest expense with Country Wide to the \$57,157 for the year, as reported on form 1098 (\$35,513 plus \$21,644 paid in interest from January through May 2007).

The new loan with Bank of America was used in its entirety to pay off the Country Wide loan; no additional funds were borrowed for any other purposes. The Bank of America interest payments from June through December 2007 amounted to the \$33,077 reported on form 1098.

EMU

JUN 15 2010

RECEIVED



Page 1

EXHIBIT K
PAGE 1 OF 2

Yadao, Eric@FTB

From: George Chelius III [cheliug@lls.edu]
Sent: Wednesday, June 11, 2014 2:20 PM
To: Yadao, Eric@FTB
Subject: Re: FW: Zakir R 624832 (L1) new rep 6 9 14

Eric,

Sorry for the slow response, I have been trying to speak with my client.

He contends that the IRS did allow for the total \$99,801 in interest deduction to be allowed. He has provided some IRS paperwork to the previous representative, and Craig is attempting to get it to me, so I am not exactly sure what that entails.

However, I am aware of his case. It stems from a refinance and the old lender had a pre-payment penalty and interest charges that were included in the new loan amount. Case law clearly states that pre-payment penalties are deductible when paid, or deemed paid by rolling them into a new loan. Thus, I am not quite sure why Mr. Zakir's entire amount of \$99,801 would not be allowed, as this loan was for his primary residence, therefore the entire amount should be allowed under IRC Section 167(h), which CA follows. Therefore, even if the IRS did not allow the full amount, then my position is that the IRS has erred in not allowing the full deduction of a qualified residence mortgage interest.

I am attempting to get the paperwork from Craig, and when I do I will have a better idea of what the IRS paperwork says that Mr. Zakir provided to the previous representative.

Best regards,

George Chelius

On Mon, Jun 9, 2014 at 1:14 PM, Yadao, Eric@FTB <Eric.Yadao@ftb.ca.gov> wrote:
Good afternoon Mr. Chelius

I wanted to reach out to the appellant to determine if there was any additional information for respondent FTB to consider and if this matter could be resolved prior to the hearing.

Craig Shaltes indicated he would send you information electronically, but in the interim, I offer the following summary:

This matter arises from respondent's assessment of tax following an Internal Revenue Service audit of the appellants' 2007 federal return. The federal audit disallowed the appellants' mortgage interest deduction in the amount of \$99,801. (See Exhibit B to respondent's opening brief.) With their appeal, the appellants provided evidence that the federal audit was revised to allow a mortgage interest deduction of \$33,077. (See IRS letter attachment to appellants' appeal. See also, exhibits B and G reflecting the IRS change in taxable income from \$138,883 to \$105,806 = \$33,077.)

The additional federal tax assessed on the revised taxable income of \$105,806 was \$17,277. (Exhibit G, page 2, transaction code 300.) FTB revised its original assessment and followed that federal revision. (See NPA,

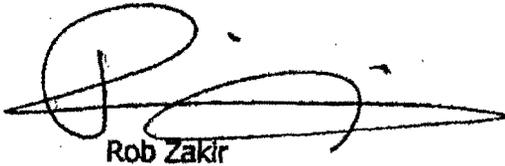
The interest paid to Wells Fargo was for a line of credit received after the home was purchased. The money from this line of credit was used in its entirety to make improvements to our main home. The interest paid on this loan from January through December 2007 amounted to the \$9,567 reported on form 1098.

All of the Home Interest Expense claimed in 2007 was legitimate interest paid on loans taken to purchase our main home and to improve our main home.

Please call me at 619-208-2344 should you have any questions regarding this issue or if you need further information.

Thank you for your time.

Sincerely,



Rob Zakir

Exhibit C, assessing \$8,216 in tax based upon the original federal audit; and, respondent's opening brief [p.3 paragraph 5] conceding the \$33,077 deduction, lowering its assessment to \$5,140, and adjusting the accuracy related penalty accordingly.)

It appears that the appellants' position is that the IRS revision allowed the entire \$99,801; however, they have not provided any evidence to support that amount. While the appellants suggest that evidence of their position is that they received a federal refund, that refund is the product of credits transfers and/or withholdings offsetting the federal audit/assessment of additional tax of \$17,277. (See Exhibit D information: See also Exhibit G transaction codes 706 and 866.)

Unless the taxpayer provides evidence to establish an error in the federal adjustment or changes, respondent's assessments that are based on federal changes are presumed correct. (Exhibit F, section 8.)

To date, the appellants have not provided any evidence from the IRS (an IRS letter or form 886-A) that the IRS allowed a mortgage interest deduction greater than the \$33,077 amount. Had the IRS done so, the changes would appear on their federal transcript. (Exhibit G.)

To be sure, I have reviewed a recent federal transcript dated May 29, 2014, which reflects that the additional tax assessed by the IRS remains at \$17,277, which is identical to the amounts illustrated in Exhibit G and consistent with respondent's assessment on the revised taxable income.

If you have any information from the IRS to show that they have allowed a greater deduction than \$33,077, please transmit that information via facsimile. To the extent that any new information supports the appellants' position, we may be able to resolve this matter before the hearing.

Eric A. Yadao
Franchise Tax Board
Tax Counsel
(916) 845-5105, voice
(916) 843-0304, fax

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