TAXPAYER EXHIBIT
B1
May 24, 2016
Gregory Wimmer
842007

OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
SMALL BUSINESS/SELF-EMPLOYED
701 B STREET, SUITE 901
SAN DIEGO, CALIFORNIA 92101
(619) 744-7105
FAX: (619) 557-6581

CC:SB:8:SD:2:NCBeckley
TL-10563-14

MAY 13 2016

Richard A. Carpenter
[redacted]

Re: Gregory J. Wimmer v. Commissioner
Docket No. 10563-14

Dear Richard A. Carpenter:

In order to finalize the settlement we reached with respect to your client's tax liabilities for the tax years 2007, 2008, 2009, and 2010 in the above-entitled case, we must file with the Tax Court a decision document reflecting that settlement agreement that shows the amount of tax and additions to tax/penalties that petitioner owes based on our settlement.

Enclosed are the following documents:

(1) A decision document (original and two copies) that shows the amount which petitioner owes;

(2) A Statement of Income Tax Changes; and

(3) A calculation of the estimated interest that petitioner owes based on the settlement if petitioner pays the entire amount of tax and interest by June 11, 2016, or July 11, 2016.

Please carefully review the Statement of Income Tax Changes, the interest computations and the decision document to make sure that you agree with them. It is important that they be correct because the United States Tax Court usually will not change its decision, even if there is a mistake, unless the Court is notified of the mistake within 30 days after the decision is accepted by the Court. If you believe that there are mistakes in our calculations of the amount owed or in the decision, please telephone me as soon as possible.

If you agree with the calculations and the decision document, please sign the original and one copy of the decision document and return them to this office for filing with the

STATE BOARD OF EQUALIZATION

Appeal Name: Gregory Wimmer
Case ID: 842007 ITEM #. B1
Date: 5/24/16 Exhibit No: 5.1
TP FTB DEPT PUBLIC COMMENT

Tax Court. The remaining copy, as well as the Statement of Income Tax Changes and the calculation of interest are for your records.

Once the decision document is filed and entered by the Tax Court, the Internal Revenue Service will send petitioner a bill for the amount petitioner owes. In case petitioner wants to pay the tax and interest before petitioner receives the bill, petitioner may do so. As previously noted, the interest calculations are estimates and only apply until June 11, 2016, and July 11, 2016. A final computation will be made by the Service Center. The interest petitioner owes will increase if full payment is not made by those dates. Also, interest will continue to run on the unpaid portions if petitioner pays less than the total amount due.

If petitioner decides to immediately pay some or all of the amount petitioner owes, petitioner should mail a check to the Internal Revenue Service Center:

Department of the Treasury
Internal Revenue Service Center
Fresno, CA 93888

The check should be made payable to the United States Treasury. In order to process the check and apply the payments appropriately, please include the following information with petitioner's check:

1. Petitioner's name and address.
2. Petitioner's Social Security number.
3. The tax years for which petitioner is making payment.
4. The type of tax due (for example, income tax).
5. The total amount of the payment. If petitioner owes tax for more than one year, the Internal Revenue Service will also need to know how much is being paid for each year. Petitioner should also state how much of each year's payment is for tax and how much is for interest.
6. A copy of the signed "decision."

Please be advised that you should not consider any agreement to settle this case final and binding until we have executed the decision documents and the Tax Court has entered judgment in this case. If you have any questions about this matter, please let me know.

Sincerely,

SHERRI SPRADLEY WILDER
Area Counsel
(Small Business/Self-Employed: Area 8)

By: Nicole Beckley
Nicole C. Beckley
Attorney, (San Diego, Group 2)
(Small Business/Self-Employed)
T.C. Bar No. LN0086

Enclosures (4):
Decision Document (original and 2 copies)
Statement - Income Tax Changes
Interest Computation
Pre-addressed Envelope

UNITED STATES TAX COURT

GREGORY J. WIMMER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 10563-14
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED AND DECIDED: That there is no deficiency in income tax due from, nor overpayment due to, petitioner for the taxable year 2007;

That there are deficiencies in income tax due from petitioner for the taxable years 2008, 2009, and 2010 in the amounts of $5,060.00, $10,742.00, and $17,995.00, respectively;

That there are no penalties due from petitioner for the taxable years 2007, 2008, 2009, and 2010, under the provisions of I.R.C. § 6662(a); and

That there is no addition to tax due from petitioner for the taxable year 2010, under the provisions of I.R.C. § 6651(a)(1).

Judge.

Entered:

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

It is further stipulated that interest will accrue and be assessed as provided by law on the deficiencies due from petitioner.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioner waives the restrictions contained in I.R.C. § 6213(a) prohibiting assessment and collection of the deficiencies (plus statutory interest) until the decision of the Tax Court becomes final.

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

By: _____

RICHARD A. CARPENTER
Counsel for Petitioner
Tax Court Bar No. CR0695
406 Ninth Ave, Suite 213
San Diego, CA 92101
Telephone: (619) 696-8607

NICOLE C. BECKLEY
Attorney,
(Small Business/Self-Employed)
Tax Court Bar No. LN0086
701 B Street
Suite 901
San Diego, CA 92101
Telephone: 619-744-7193

Date: _____

Date: _____

Form **3610** (Rev. March 1986)	Department of the Treasury -- Internal Revenue Service **Audit Statement**	Symbols CC:SB:8:SD:2:NCB:ST	
Name of Taxpayer Gregory J. Wimmer		SSN or EIN [redacted]	Date Prepared 5/12/2016
Kind of Tax Income			Docket Number 10563-14

Tax Period Ended	DEFICIENCY (OVERASSESSMENT) *(Increase or decrease in Tax and Penalties)*				
	Statutory Deficiency	Addition to Tax IRC Section 6651(a)(1)	Penalty IRC Section 6662(a)		Total
12/31/2007	0.00		0.00		0.00
12/31/2008	5,060.00		0.00		5,060.00
12/31/2009	10,742.00		0.00		10,742.00
12/31/2010	17,995.00	0.00	0.00		17,995.00
Total	33,797.00	0.00	0.00		33,797.00

Interest continues to accrue on the deficiency until it is paid in full.

Adjustment of the tax liability shown herein is based on revision of the prior determination to reflect Counsel's settlement.

Form 5278 (Rev. June 2011)

Statement - Income Tax Changes

Schedule 1

1. Name(s) of taxpayer(s)
Gregory J. Wimmer

2. ☐ Notice of Deficiency ☐ Other
☑ Settlement Computation

3. Taxpayer Identification Number [redacted]

4. Form number: 1040

5. Docket number: 10563-14

6. Office symbols: CC:SB:8:SD:2:NCB:ST

	Tax Year(s) Ended		
7. Adjustments to income	Year: 12/31/2007	Year: 12/31/2008	Year: 12/31/2009
a. Sch RI - Real Estate Loss After Passive Limitation		14,455.00	38,364.00
b. Exemptions		140.00	
c. Itemized Deductions			384.00
d.			
e.			
f.			
g.			
h.			
8. Total adjustments	0.00	14,595.00	38,748.00
9. Taxable income as shown in ☐ Preliminary letter dated ☐ Notice of deficiency dated ☑ Return as filed	728,409.00	259,223.00	664,386.00
10. Taxable income as revised	728,409.00	273,818.00	703,134.00
11. Tax Tax Method / Filing Status	234,017.00 TAX RATE Single	76,111.00 TAX RATE Single	223,707.00 SCHEDULE D Single
12. Alternative tax, if applicable			
13. Alternative minimum tax *(Starting in tax year 2000)*		3,198.00	0.00
14. Corrected tax liability - *(lesser of line 11 or 12 plus line 13)*	234,017.00	79,309.00	223,707.00
15. Less credits a. Prior Year Minimum Tax Credit			2,757.00
b.			
c.			
16. Balance - *(line 14 less total of lines 15a - 15c)*	234,017.00	79,309.00	220,950.00
17. Plus other taxes a.			
b.			
c.			
18. Total corrected tax liability - *(line 16 plus lines 17a - 17c)*	234,017.00	79,309.00	220,950.00
19. Total tax shown on return or as previously adjusted	234,017.00	74,249.00	210,208.00
20. Adjustments increase or (decrease) to a.			
b.			
c.			
21. Deficiency - Increase in tax *(overassessment - decrease in tax)* *(line 18 less line 19 adjusted by lines 20a - 20c)*	0.00	5,060.00	10,742.00
22. Adjustments to prepayment credits - Increase *(decrease)*			
23. Balance due or ***(Overpayment)*** **excluding interest and penalties** *(line 21 adjusted by line 22)*	0.00	5,060.00	10,742.00
24. Penalties and/or Additions to Tax *(listed below)*			

Form 5278 (Rev. June 2011)

Statement - Income Tax Changes

Schedule 1

1. Name(s) of taxpayer(s): Gregory J. Wimmer

2. ☐ Notice of Deficiency ☐ Other ☑ Settlement Computation

3. Taxpayer Identification Number: [redacted]

4. Form number: 1040

5. Docket number: 10563-14

6. Office symbols: CC:SB:8:SD:2:NCB:ST

	Tax Year(s) Ended		
7. Adjustments to income	Year: 12/31/2010		
a. Sch 01 - Real Estate Loss After Passive Limitation	64,271.00		
b.			
c.			
d.			
e.			
f.			
g.			
h.			
8. Total adjustments	64,271.00		
9. Taxable income as shown in ☐ Preliminary letter dated ☐ Notice of deficiency dated ☐ Return as filed	432,546.00		
10. Taxable income as revised	496,817.00		
11. Tax Tax Method / Filing Status	150,228.00 SCHEDULE D Single		
12. Alternative tax, if applicable			
13. Alternative minimum tax *(Starting in tax year 2000)*	17,977.00		
14. Corrected tax liability - *(lesser of line 11 or 12 plus line 13)*	168,205.00		
15. Less credits a.			
b.			
c.			
16. Balance - *(line 14 less total of lines 15a - 15c)*	168,205.00		
17. Plus other taxes a. Self Employment Tax	23,522.00		
b.			
c.			
18. Total corrected tax liability - *(line 16 plus lines 17a - 17c)*	191,727.00		
19. Total tax shown on return or as previously adjusted	173,732.00		
20. Adjustments: increase or (decrease) to: a			
b			
c.			
21. Deficiency - Increase in tax *(overassessment - decrease in tax)* *(line 18 less line 19 adjusted by lines 20a - 20c)*	17,995.00		
22. Adjustments to prepayment credits - Increase *(decrease)*			
23. Balance due or *(Overpayment)* excluding interest and penalties *(line 21 adjusted by line 22)*	17,995.00		
24. Penalties and/or Additions to Tax *(listed below)*			

FAX COVER SHEET

INTERNAL REVENUE SERVICE

OFFICE OF DIVISION COUNSEL
(SMALL BUSINESS/SELF-EMPLOYED)
701 B Street, Suite 901
San Diego, California 92101
(619) 744-7105
FAX: (619) 557-6581

Date Sent:	May 6, 2016	Pages Sent:	6 (Counting Cover)
Deliver To:	Richard Carpenter	FAX Number:	619-696-0126
Organization:		Phone Number:	
Sender:	Nicole C. Beckley Attorney (San Diego, Group 2)	FAX Number:	619-557-6581
Office:	Small Business/Self-Employed	Phone Number:	619-744-7193
Sent by: _____		Time: _____	

THIS DOCUMENT IS INTENDED ONLY FOR THE NAMED ADDRESSEE.

This communication is intended for the sole use of the individual to whom it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If this reader of this communication is not the intended recipient or the employee or agent for delivering the communication to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and return the communication to the address above via the United States Postal Service. Thank you.

COMMENTS:

OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
SMALL BUSINESS/SELF-EMPLOYED
701 B STREET, SUITE 901
SAN DIEGO, CALIFORNIA 92101
(619) 744-7105
FAX: (619) 557-6581

CC:SB:8:SD:2:NCBeckley
TL-10563-14

Via Facsimile to (619) 696-0126 & Regular Mail

MAY 06 2016

Richard A. Carpenter
[redacted]

Reference: Gregory J. Wimmer v. Commissioner, Docket No. 10563-14

Dear Mr. Carpenter:

Enclosed please find a Stipulation of Settled Issues for the above referenced case. I believe the stipulation reflects the settlement that we have reached in regard to the above referenced case.

For tax year 2008, the adjustment to the Schedule E real estate loss from the amount claimed on petitioner's 2008 return of ($552,017) to the settlement amount of ($537,562) is due to the following adjustments: 1) the disallowance of the $15,000 for repairs for the Franklin Street properties (these were determined to be capital expenditures, not repairs), and 2) allowance of an additional depreciation deduction of $545.

For tax year 2009, the adjustment to the Schedule E real estate loss from the amount claimed on petitioner's 2009 return of ($576,202) to the settlement amount of ($537,838) is due to the following adjustments: 1) disallowance of the $5,000 expense claimed under "other expenses" for 1167 Pacific and the disallowance of the $5,000 expense claimed under "other expenses" for 1169 Pacific, 2) disallowance of $30,000 for the Franklin Street properties (these expenses were determined to be capital expenditures, not repairs), and 3) allowance of an additional depreciation deduction of $1,636.

For tax year 2010, the adjustment to the Schedule E real estate loss from the amount claimed on petitioner's 2010 return of ($552,932) to the settlement amount of ($488,661) is due to the following adjustments: 1) disallowance of "repairs" in the amount of $27,416 which were determined to be capital expenditures (of this amount, $6,628 was for Franklin Street, and $20,788 was for the Pacific properties), 2) disallowance of "other expenses" in the amount of $23,251 from Jackson Street and

$16,237 from Patrol Road that we agreed should be capitalized and depreciated, and 3) allowance of an additional depreciation deduction of $2,633.

Please review the Stipulation of Settled Issues. If you agree, please let me know by Friday May 6, 2016 and return a signed copy of the Stipulation of Settled Issues to me by fax to (619) 557-6581 by that date. If you have any questions or concerns, please do not hesitate to contact me. I may be reached at (619) 744-7193. Thank you.

Sincerely,

Nicole C. Beckley
Attorney (San Diego, Group 2)
(Small Business/Self-Employed)
T.C. Bar No. LN0086

Enclosures: Stipulation of Settled Issues

UNITED STATES TAX COURT

GREGORY J. WIMMER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 10563-14
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
	)	
Respondent.	)	

STIPULATION OF SETTLED ISSUES

WITH RESPECT TO the issues raised in the Notice of Deficiency issued to petitioner on April 8, 2014 for tax years 2007, 2008, 2009, and 2010, that forms the basis for this case, the parties agree and stipulate as follows:

1. The parties agree petitioner qualifies as a real estate professional pursuant to I.R.C. § 469(c)(7) who materially participated in his rental real estate activity in tax years 2007, 2008, 2009, and 2010.

2. For tax year 2007, petitioner claimed Schedule E rental real estate losses totaling ($317,092.00). The Notice of Deficiency disallowed the rental real estate losses claimed on the return. The parties now agree petitioner is entitled to claim Schedule E rental real estate losses for tax year 2007 in the amount totaling ($317,092.00).

3. For tax year 2008, petitioner claimed Schedule E rental real estate losses totaling ($552,017.00). The Notice of Deficiency disallowed the rental real estate losses claimed on

the return. The parties now agree petitioner is entitled to claim Schedule E rental real estate losses for tax year 2008 in the amount totaling ($537,562.00).

4. For tax year 2009, petitioner claimed Schedule E rental real estate losses totaling ($576,202.00). The Notice of Deficiency disallowed the rental real estate losses claimed on the return. The parties now agree petitioner is entitled to claim Schedule E rental real estate losses for tax year 2009 in the amount totaling ($537,838.00).

5. For tax year 2010, petitioner claimed Schedule E rental real estate losses totaling ($552,932.00). The Notice of Deficiency disallowed the rental real estate losses claimed on the return. The parties now agree petitioner is entitled to claim Schedule E rental real estate losses for tax year 2010 in the amount totaling ($488,661.00).

6. The parties agree that no adjustments should be made for Schedule A itemized deductions, unless they are computational in nature, and therefore agree to remove the adjustments shown in the Notice of Deficiency for tax year 2007 in the amount of ($3,647.00), tax year 2008 in the amount of ($7,644.00), tax year 2009 in the amount of ($5,106.00), and tax year 2010 in the amount of ($11,024.00).

7. The parties agree that there is no penalty due from petitioner for the taxable years 2007, 2008, 2009, and 2010 pursuant to the provisions of I.R.C. § 6662(a).

8. The parties agree that petitioner is not liable for the late filing addition to tax pursuant to I.R.C. § 6651(a)(1) for tax year 2010.

9. Any remaining issues are computational in nature.

10. This Stipulation of Settled Issues resolves all issues in this case.

11. The parties agree to this Stipulation of Settled Issues.

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

By: _____
NICOLE C. BECKLEY
Attorney,
(Small Business/Self-Employed)
Tax Court Bar No. LN0086
701 B Street
Suite 901
San Diego, CA 92101
Telephone: 619-744-7193

_____
RICHARD A. CARPENTER
Counsel for Petitioner
Tax Court Bar No. CR0695
406 Ninth Ave, Suite 213
San Diego, CA 92101
Telephone: (619) 696-8607

Date: _____

Date: _____

FTB Appeal 05/24/16

Gregory J. Wimmer

P.O. Box [redacted]

Tax Year 2011

SS[redacted]

Phon[redacted]

Summary

- I did the best I could but I made a mistake.
- I relied on Turbo-Tax Pro Series to guide me. (Rohrabaugh v. US cited in US v. Boyle)
- I was not willfully negligent.
- I used ordinary business care.
- I acted as a typical prudent taxpayer would act.
- I acted as a prudent business person would act with ordinary intelligence and skill.
- It was reasonable and prudent for me to expect the IRS resolution on issues that would have a material impact on the CA filing for 2011 and later years. I provided the IRS documentation for every question the asked of me.
- The penalty is excessive given the facts and circumstances.

Turbo Tax Pro Series

- I made a mistake in calculating my tax filing leading me to think I had a refund on my tax return for 2011.
- I relied on Turbo Tax Pro-Series to correctly compute my tax as I have done for decades.
- I did not catch the default setting in Turbo-Tax which resulted in the computational error. The mistake was not Willful or Negligent.
- I have relied on Turbo Tax for decades and this is the first year I uncovered the error. Its was reasonable and prudent for me to rely upon the computation.
- The explanation was of "Other Passive Exception" was plausible.
- I relied on the sophisticated software to guide me more than my own knowledge and training which is dated.
- I have not practiced Public Actg since the 90's. I am better than the average Taxpayer but not a professional.
- I subsequently figured out how to over ride the "Other Passive Exception" on the CA data input sheet. It was not obvious.
- Because I thought I had a refund I was willing to wait to get my refund given the pending IRS audit.

Internal Revenue Service

- I am under audit for a multitude of line items for 2007 thru 2010.
- I provided a banker's box of more that 40 lbs. worth of documents answering every single item under examination.
- It was reasonable for me to expect resolution by October 15 given the support I provided.
- A resolution would have material impact on CA for 2011 and later years.
- 2007 thru 2010 items in question are Schedule A Treatment of Personal Residence, Schedule A Treatment of Vacation Rental, Suspended Losses for CA to be off set against future gains. See copy of IRS proposed adjustment which I have not yet stipulated too but may as part of a settlement agreement. To be consistent I would have treat items in 2011 and later the same as 2007 thru 2010.
- The changes once agreed upon will be material.
- Return was on valid Federal and State Extension.
- As soon as it became apparent that the IRS was not going to resolve the issue I processed the return on October 28, 2012 and filed it.

Other Facts & Circumstances

- I have an Unblemished filing history which is evidence of no Willful Neglect.
- I had the money to pay the tax. See Statement.
- The IRS has this week finally adjudicated my case reducing the liability from $ 872,104 down to $ 33,797 for 2007-2010. The only adjustments are to re-class expenses to Cap-Ex items $ 72k and increase depreciation by $ 3k (2008-2010). No adjustments to 2007. No other adjustments to 2008-2010 nor any penalties.

Comments to FTB Counsel

- The IRS proposed adjustment of reclassifying Schedule E to Schedule A would have a material impact on all tax years for CA.
- The argument that I should have know I would owe tax giving my income level for 2011 is not valid. For many year prior I had other similar circumstances that did not result in taxes due to CA. Different limitation rules applied but amounts were similar.
- Counsel asserts that since I am a CPA I should know better. I have not practiced since the 90's and not maintained my skill level hence the reliance maybe too much so on Turbo Tax software

Conclusion

- I made a mistake that was not willful or negligent.
- I acted in a prudent and reasonable manner using ordinary. intelligence and care.
- I want to pay the tax due.
- I want pay the accrued interest on the tax due and make the State of CA whole.
- I want to pay a reasonable fine given the circumstances.
- I want to move on with a good positive relationship with the State.
- Given the Facts & Circumstances 25% seems excessive and an undo punishment for a mistake.
- I will amend the returns once the IRS Case is settled. My tax liability may even go down given Schedule A items proposed in 2007 to 2010 which I will treat the same for 2011 and later years.

Responses to FTB Counsel

- Yes I have a CPA License but I have not practiced since the mid 90's. I am better than the average bear but not a professional hence my reliance on Turbo Tax.
- 2007 -2010 Proposed adjustments were not just NOL's. Proposed adjustments were for Sch E. Expenses & Cap-Ex, Sch. A (Mortgages and Taxes), Passive Activities. All would have had material impact on CA 2011 and future years.
- Adjustments were material. From $ 900k down to $ 30k.
- As a prudent taxpayer since 1989 I had W-2 income with permitted passive activity losses so easy to understand the same for 2011.
- Case law supports abatement due to reliance on a professional including software. Software error is reasonable.
- Was over paid on tax so extension was valid. Had funds to pay liability. See savings account.
- No fines or penalties from the IRS supports abatement.