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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **RUDOLPH BURIANI AND**) Case No. 668146
13 **NORMA JEAN BURIANI¹**)

14 _____
15 Year Proposed
16 2008 Assessment
17 \$3,555

17 Representing the Parties:
18 For Appellants: Rudolph Buriani and Norma Jean Buriani
19 For Franchise Tax Board: Rachel Abston, Senior Legal Analyst
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21 **QUESTION:** Whether appellants have demonstrated error in the Franchise Tax Board's (FTB or
22 respondent) assessment, which was based upon a federal adjustment.

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26 ¹ Appellants currently reside in Solano County, California.

27 ² This appeal was originally scheduled for oral hearing at the Board's April 22, 2014 Sacramento Board meeting but was
28 postponed, at appellants' request, due to a scheduling conflict. The appeal was then rescheduled for the Board's July 17-18,
2014 Sacramento meeting. The appeal was then postponed at appellants' request to allow them additional time to prepare for
the hearing. The appeal has been rescheduled for the Board's November 19-20, 2014 Sacramento Board meeting.

1 HEARING SUMMARY

2 Background

3 Appellants filed a joint 2008 California Resident Income Tax Return, reporting a federal
4 adjusted gross income (AGI) of \$125,386, California adjustments (subtractions) of \$25,462, and a
5 California AGI of \$99,924.³ (FTB opening brief (FTB OB, p. 1).) Appellants also listed itemized
6 deductions of \$110,249 and a California taxable income of negative \$10,325. (*Id.*) On their return,
7 appellants claimed an overpayment of \$2,998. (*Id.*) During the processing of appellants' return, the
8 FTB applied an extension payment of \$19 and corrected appellants' overpayment to \$3,017, which the
9 FTB refunded. (*Id.*, p. 2.)

10 Later, the FTB learned that the Internal Revenue Service (IRS) increased appellants'
11 federal AGI to account for unreported gambling winnings of \$101,984.⁴ (*Id.* & Ex. B.) On
12 April 12, 2012, the FTB issued a Notice of Proposed Assessment (NPA) that conformed to the federal
13 adjustment by adding \$101,984 to appellants' 2008 California taxable income. (*Id.* & Ex. C.) The NPA
14 set forth an additional tax of \$3,555.00, plus interest of \$460.58. (*Id.*)

15 Appellants timely protested the NPA, arguing, in a general manner, that they had lost
16 more than they had won. (*Id.* & Ex. D.) With their protest letter, appellants provided copies of their
17 win/loss statements from Cache Creek Casino. (*Id.*)

18 In a letter dated August 23, 2012, the FTB stated that appellants' federal audit report
19 showed that appellants failed to report gambling winnings of \$101,984. (*Id.* & Ex. E.) The FTB's letter
20 also stated that, if appellants had any information showing that the IRS reduced or cancelled the 2008
21 federal assessment, appellants should provide such information to the FTB. (*Id.*) When the FTB did not
22 receive further information, the FTB affirmed the NPA in a Notice of Action (NOA) dated
23 October 25, 2012. (FTB OB, p. 2 & Appeal Letter (AL).) The NOA set forth an additional tax of
24 \$3,555.00, plus interest of \$534.42. This appeal followed.

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27 ³ A copy of appellants' 2008 California return is not provided in the appeal file. Return amounts are taken from the FTB's
electronic records.

28 ⁴ The federal audit report also increased appellants' 2008 federal AGI by an additional \$6,516 to account for savings bond
interest, which is not taxable to California.

1 Contentions

2 Appellants' Contentions

3 Appellants assert the same argument that they made at protest—i.e., they lost more than
4 they won. (AL, p. 1.) With their appeal letter, appellants provided copies of their win/loss statements
5 from Cache Creek Casino.

6 The FTB's Contentions

7 The FTB contends that appellants included gambling losses of \$101,984 on their 2008
8 federal return but failed to include gambling winnings of \$101,984 on that same return. (FTB OB, p. 3.)
9 The FTB asserts that its proposed assessment correctly conforms to the IRS's adjustment. In support,
10 the FTB provides a recent copy of appellants' federal transcript dated December 4, 2012. (*Id.*, Ex. I.) In
11 addition, the FTB provides copies of appellants' 2008 federal Wage and Income Statements. (*Id.*,
12 Exs. F & G.)

13 The FTB states that R&TC section 18622 requires a taxpayer to concede the accuracy of
14 the federal changes or to state wherein the changes are erroneous. (*Id.*, p. 4.) Also, the FTB states that a
15 deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer
16 bears the burden of proving the FTB's determination is erroneous, citing the *Appeal of Donald G. and*
17 *Franceen Webb*, 75-SBE-061, decided on August 19, 1975.⁵ (*Id.*) The FTB argues that appellants
18 failed to provide evidence showing that the IRS adjustment (as set forth in the federal transcript) and the
19 California assessment based thereon, were made in error. Thus, the FTB contends that appellants failed
20 to carry their burden of proving error. (*Id.*, pp. 3-4.)

21 Applicable Law

22 Gross Income

23 Gross income includes all income from whatever source derived, including gambling
24 winnings. (See Int.Rev. Code, § 61; Rev. & Tax Code, § 17071; *McClanahan v. United States*
25 (5th Cir. 1961) 292 F.2d 630, 631-632.) In the case of a taxpayer not engaged in the trade or business of
26 gambling, gambling losses are allowed as an itemized deduction, but only to the extent of gains from
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28 ⁵ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 such transactions. (Int.Rev. Code, § 165, subd. (d); Rev. & Tax Code, § 17201; *McClanahan v.*
2 *United States, supra*, at fn. 1, citing *Winkler v. United States* (1st Cir. 1956) 230. F.2d 766.)

3 Federal Adjustments

4 A taxpayer must concede the accuracy of federal changes or prove that those changes,
5 and any California deficiency assessment based thereon, are erroneous. (Rev. & Tax. Code, § 18622,
6 subd. (a); *Appeal of Sheldon I. and Helen R. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Aaron and*
7 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) It is well-settled that a deficiency assessment based
8 upon federal adjustments to income and deductions is presumed correct and the taxpayer bears the
9 burden of proving that the FTB's determination is erroneous. (*Appeal of Sheldon I. and*
10 *Helen R. Brockett, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of
11 proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

12 STAFF COMMENTS

13 As stated above, IRC section 61 provides that gross income includes all income from
14 whatever source derived, including gambling winnings. Here, the FTB followed federal audit
15 adjustments which increased appellants' taxable income by \$101,984 for gambling winnings.⁶ This is
16 the only adjustment that the FTB seeks to make to appellants' taxable income for 2008. The FTB has
17 not sought to adjust the \$101,984 in gambling losses that appellants claimed as itemized deductions.
18 The FTB is merely seeking to allow gambling losses as a deduction, but not to exceed the amount of the
19 taxpayers' gambling winnings. Here, appellants reported no gross income for their gambling winnings.
20 As such, the FTB is allowing appellants' gambling losses of \$101,984, but only to the extent of
21 appellants' gambling winnings of \$101,984. Such is consistent with IRC section 61 and IRC
22 section 165(d).

23 Finally, we note that appellants paid the tax assessed by the IRS relating to the federal
24 adjustments for 2008. Appellants' federal account transcript does not show that the IRS has cancelled or
25 reduced its assessment and that the assessment is final.

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28 ⁶ According to the Wage and Income Transcripts provided (FTB OB, Exs. F & G), appellant-wife had gambling winnings of \$10,200 reported on various Forms W-2G and appellant-husband had gambling winnings of \$91,784 (\$76,784 reported on various Forms W-2G and \$15,000 reported on a Form 1099-MISC).