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

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **ROB ZAKIR AND**) Case No. 624832²
13 **RAYA ZAKIR**¹)
14 _____)

		Proposed	
		Assessments ³	
	<u>Year</u>	<u>Taxes</u>	<u>Penalty</u>
	2007	\$8,126.00	\$1,643.20

17 Representing the Parties:

18 For Appellants: Tax Appeals Assistance Program (TAAP)⁴
19 For Franchise Tax Board: Eric A. Yadao, Tax Counsel

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22 ¹ Appellants list an address in San Diego County, California.

23 ² This matter was originally scheduled for oral hearing at the Board’s June 24-26, 2014 Culver City Board meeting, but was
24 postponed at appellants’ request and rescheduled for the Board’s October 14-15, 2014 Culver City Board meeting.

25 ³ The Notice of Action (NOA) lists an additional tax of \$8,216.00 and an accuracy-related penalty of \$1,643.20. On appeal,
26 the Franchise Tax Board (FTB or respondent) agrees to reduce the additional tax to \$5,140 and the accuracy-related penalty
to \$1,028.

27 ⁴ Appellants originally filed their appeal letter dated August 10, 2012. Appellants were subsequently represented by
28 George Chelius and Cicely A. Dickerson from TAAP. Appellants are currently represented by Kelly Blacketer from TAAP
who most recently filed appellants’ additional briefing on November 15, 2013.

- 1 QUESTIONS: (1) Whether appellants have demonstrated error in the proposed assessment, which
2 was based upon federal adjustments.
- 3 (2) Whether appellants have shown that the accuracy-related penalty should be abated.

4 HEARING SUMMARY

5 Background

6 Appellants filed a timely joint 2007 California income tax return, reporting a federal
7 adjusted gross income (AGI) of \$167,745, itemized deductions of \$119,793, and a California taxable
8 income of \$47,952. (FTB (opening brief) OB, p. 1 & Ex. A.) After taking into account appellants'
9 withholdings, appellants reported a California refund due of \$8,731. (*Id.*) Appellants also filed a joint
10 2007 federal return, reporting, among other things, a federal home mortgage interest deduction of
11 \$99,801 and a federal taxable income of \$39,082. (See *id.*, Ex. B.)

12 Later, the FTB learned that the Internal Revenue Service (IRS) disallowed appellants'
13 2007 federal home mortgage interest deduction of \$99,801, which increased appellants' federal taxable
14 income from \$39,082 to \$138,883. (*Id.*) On April 18, 2011, the FTB issued a Notice of Proposed
15 Assessment (NPA) that conformed to the federal adjustment by adding \$99,801 to appellants' 2007
16 California taxable income, which increased appellants' 2007 California taxable income from \$47,952 to
17 \$147,753. (*Id.*, Ex. C.) The NPA set forth an additional tax of \$8,216.00, an accuracy-related penalty
18 of \$1,643.20, and interest of \$1,637.18. (*Id.*)

19 In reply to the NPA, appellants provided letters from the IRS to appellants (the IRS
20 letters are dated February 14, 2011), wherein the IRS states that appellants are entitled to a refund of
21 \$2,884.60 for the 2007 tax year, calculated as follows:

22	Increase in tax	\$17,277.00
23	Increase in credit for tax withheld	-\$10,735.00
24	Increase in credit	-\$10,735.00
25	Increase in accuracy-related penalty	\$ 1,308.40
26	Refund due	\$ 2,884.60

26 (See *id.*, Ex. D.)

27 After reviewing the IRS letters, the FTB sent appellants a letter dated February 24, 2012,
28 asserting that the aforementioned IRS letters do not support a finding that the IRS revised its federal

1 adjustment for home mortgage interest of \$99,801. (*Id.*, Ex. E.) The FTB stated that, if appellants had
2 any additional evidence that they wanted the FTB to consider, appellants should provide such evidence
3 on or before March 25, 2012. (*Id.*) When appellants did not respond or provide further evidence, the
4 FTB affirmed the NPA in an NOA dated July 10, 2012. The NOA sets forth an additional tax of
5 \$8,216.00, an accuracy-related penalty of \$1,643.20, and interest of \$2,152.29. This timely appeal
6 followed.

7 Concession on Appeal

8 The FTB states that, based on a copy of appellants' revised federal transcript dated
9 November 1, 2012, the FTB will allow (on appeal) a home mortgage interest deduction of \$33,077 for
10 the 2007 tax year. (FTB OB, p. 3.) The FTB states that other than this concession, appellants have
11 failed to show error in the FTB's proposed assessment. (*Id.*)

12 Contentions

13 Appellants' Appeal Letter

14 Appellants assert in a general manner that the IRS reversed its federal adjustment of
15 \$99,801. With their appeal letter, appellants provide correspondence (i.e., a letter dated January 24,
16 2011 and a federal Form 886-A) from the IRS, wherein the IRS states that, based on its records, it will
17 allow a federal home mortgage interest deduction of \$33,077 for the 2007 tax year.

18 The FTB's Opening Brief

19 The FTB states that based on a copy of appellants' revised federal transcript dated
20 November 1, 2012, the FTB will allow (on appeal) a home mortgage interest deduction of \$33,077 for
21 the 2007 tax year. (FTB OB, p. 3.) The FTB asserts that, other than the above-listed concession,
22 appellants have failed to show error in the FTB's proposed assessment, citing the *Appeal of Frank J.*
23 *and Barbara D. Burgett*, 83-SBE-127, decided on June 21, 1983.⁵ (*Id.*) The FTB also states that
24 appellants have failed to provide any evidence (or argument) showing that the accuracy-related penalty
25 should be abated.

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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 Appellants' Reply Brief

2 Appellants assert that the IRS allowed a home mortgage interest deduction of \$99,801—
3 and appellants contend that the FTB must do likewise. (App. Reply Br., pp. 1-2.) In support,
4 appellants refer to the IRS letters dated February 24, 2011 (which appellants provided at protest),
5 wherein the IRS stated that appellants were owed a refund of \$2,884.60 for the 2007 tax year. (*Id.*)

6 The FTB's Reply Brief

7 The FTB reiterates that, based on a copy of appellants' revised federal transcript dated
8 November 1, 2012, the FTB will allow (on appeal) a home mortgage interest deduction of \$33,077 for
9 the 2007 tax year. (FTB Reply Br., pp. 1-2.) The FTB asserts that, other than the above-listed
10 concession, appellants have failed to show error in the FTB's proposed assessment. (*Id.*) In addition,
11 the FTB asserts that appellants were entitled to a refund from the IRS for the 2007 tax year because
12 appellants paid their original federal assessment in full before the federal assessment was later adjusted
13 to allow appellants a home mortgage interest deduction of \$33,077. (*Id.*)

14 Appellants' Additional Brief

15 Appellants reassert their argument that the IRS allowed appellants' home mortgage
16 interest deduction of \$99,801—and appellants contend that the FTB must do likewise. (App. Add. Br.,
17 pp. 1-2.) Appellant also contend that they never made any payments to the IRS and therefore the
18 refund appellants received from the IRS cannot be the result of an overpayment. (*Id.*) In support,
19 appellants provide a copy of their federal transcript dated December 13, 2012.

20 Applicable Law

21 Additional Tax

22 A taxpayer must report federal changes to income or deductions to the FTB within
23 six months of the date the federal changes become final. (Rev. & Tax. Code, § 18622, subd. (a).) The
24 taxpayer must concede the accuracy of the federal changes or prove that those changes, and any
25 California deficiency assessment based thereon, are erroneous. (Rev. & Tax. Code, § 18622, subd. (a);
26 *Appeal of Sheldon I. and Helen R. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Aaron and*
27 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) Unsupported assertions are not sufficient to satisfy an
28 appellant's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

1 Accuracy-Related Penalty

2 R&TC section 19164, which generally incorporates the provisions of IRC section 6662,
3 provides for an accuracy-related penalty of 20 percent of the applicable underpayment. The penalty
4 applies to the portion of the underpayment attributable to (1) negligence or disregard of rules and
5 regulations, or (2) any substantial understatement of income tax. (Int.Rev. Code, § 6662(b).) For an
6 individual, there is a “substantial understatement of income tax” when the amount of the
7 understatement for a taxable year exceeds the greater of ten percent of the tax required to be shown on
8 the return, or \$5,000. (Int.Rev. Code, § 6662(d)(1).) In determining whether there is a substantial
9 understatement, the taxpayer excludes any portion of the understatement for which (1) there is
10 *substantial authority* for the treatment of the position, or (2) the position was *adequately disclosed* in
11 the tax return (or a statement attached to the return) and there is a reasonable basis for the treatment of
12 the item. (Int.Rev. Code, § 6662(d)(2)(B).) To qualify as an adequate disclosure, Treasury Regulations
13 generally require that a taxpayer disclose the details of his or her position on either a Federal Form
14 8275, a Form 8275-R, or a qualified amended return. (Treas. Reg. § 1.6662-4(f).) Even if an
15 understatement is found to be substantial, the penalty shall not be imposed to the extent the taxpayer
16 can show reasonable cause and good faith. (Rev. & Tax. Code, § 19164, subd. (d); Int.Rev. Code,
17 § 6664(c)(1); Cal. Code Regs., tit. 18, § 19164, subd. (a).) A determination of whether a taxpayer acted
18 with reasonable cause and in good faith is made on a case-by-case basis and depends on the pertinent
19 facts and circumstances, including the taxpayer’s efforts to assess the proper tax liability, the taxpayer’s
20 knowledge and experience, and the extent to which the taxpayer relied on the advice of a tax
21 professional. (Treas. Reg. § 1.6664-4(b)(1).)

22 STAFF COMMENTS

23 Additional Tax

24 Appellants’ federal transcript dated February 23, 2011, shows that the IRS initially
25 revised appellant’s federal taxable income from \$39,082 to \$138,883 to account for a home mortgage
26 interest adjustment of \$99,801. (See FTB OB, Ex. B.) Copies of appellants’ revised 2007 federal
27 transcripts dated November 1, 2012 and December 13, 2012, show that the IRS later revised appellants’
28 federal taxable income downward by \$33,077 (i.e., from \$138,883 to \$105,806), which is the same

1 amount of home mortgage interest that the FTB is conceding on appeal. (See *id*, Ex. G; App. Add. Br.,
2 Ex. A.) In short, appellant's revised federal transcripts dated November 1, 2012 and December 13,
3 2012, support the FTB's concession on appeal which reduces appellants' taxable income by a total of
4 \$33,077. As a result of respondent's concession on appeal, respondent agrees that the proposed
5 additional tax should be reduced to \$5,140 and that the accuracy-related penalty should be reduced to
6 \$1,028.

7 As noted above, appellants contend that, because they were issued a federal refund for
8 the 2007 tax year, the IRS must have allowed the full amount (i.e., \$99,801) of their claimed mortgage
9 interest deduction. That argument, however, conflicts with appellants' revised federal transcripts dated
10 November 1, 2012 and December 13, 2012. If appellants have any further evidence that they want the
11 Board to consider, then pursuant to California Code of Regulations, title 18, section 5523.6, they should
12 provide such evidence to the Board Proceedings Division at least 14 days prior to the oral hearing.⁶

13 Accuracy-Related Penalty

14 Appellants have made no arguments regarding the accuracy-related penalty. At the oral
15 hearing, appellants should clarify whether they are directly disputing the accuracy-related penalty and,
16 if so, be prepared to provide arguments (and evidence) for relief from that penalty.

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28 ⁶ Evidence exhibits should be sent to: Khaaliq A. Abd'Allah, Associate Governmental Program Analyst, Board Proceedings
Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.