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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 **PATRICK T. ELLWOOD AND**) Case No. 856517
13 **DENISE A. ELLWOOD**)

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15 Year Claim for
2010 Refund
16 \$37,991.51¹

17 Representing the Parties:

19 For Appellants: David J. Bowie, Attorney
20 For Franchise Tax Board: Eric A. Yadao, Tax Counsel

22 QUESTIONS: (1) Whether appellants have shown reasonable cause for the late filing of their tax
23 return; and
24 (2) Whether appellants have shown that they are entitled to interest abatement.

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28 ¹ This is the amount recognized by the Board's Board Proceedings Division. According to respondent, the actual amount is \$37,977.49, consisting of a late filing penalty of \$27,832.00 and interest of \$10,145.49.

1 HEARING SUMMARY

2 Background

3 On March 15, 2012, appellants file a joint 2010 California return, reporting taxable
4 income of \$1,334,141 and a tax of \$122,830. After the addition of a mental health services tax of
5 \$3,341, appellants reported a total tax of \$126,171. After applying California income tax withholdings
6 of \$14,843, appellants reported a tax due of \$111,328. Appellants self-assessed a late filing penalty of
7 \$27,832 and reported a total amount due of \$139,160. (Resp. Op. Br., p. 1, exhibits A-B.)

8 Respondent accepted appellants' 2010 return and imposed a late filing penalty of
9 \$27,832, which is 25 percent of the tax due of \$111,328, plus interest.² The parties subsequently
10 executed an installment agreement. Appellants made installment payments and satisfied in full their
11 2010 balance due in August 2014. Appellants reportedly requested the abatement of the late filing
12 penalty and interest in several correspondences to respondent. In a letter dated September 25, 2014,
13 respondent stated that it was treating appellants' correspondences as a claim for refund and denied
14 appellants' request for the abatement of the penalty and interest. (Appeal Letter, attachment; Resp. Op.
15 Br., p. 2, exhibit A.)

16 Appellants filed this timely appeal.

17 Contentions

18 Appellants' Contentions

19 Appellants contend that reasonable cause for the abatement of the late filing penalty
20 exists because they were "financially devastated" by the crash of the real estate market. They assert
21 that appellant-husband is a real estate developer, individually and through affiliated entities, as well as a
22 licensed commercial and residential real estate broker. Appellants also assert that he was involved in
23 two real estate development projects involving two separate single member limited liability companies
24 (LLCs) known as Temescal Lofts, LLC and Temescal Row Houses, LLC. They further assert that both
25 projects began prior to 2007 and involved the demolition of a commercial structure and the
26 construction of 10 row houses and 18 condominiums located on 40th Street in Oakland. According to
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28 ² A copy of the Return Information Notice is not in the appeal file.

1 appellants, appellant-husband invested approximately \$2 million in cash in the two projects and he
2 obtained a construction loan with Mechanics Bank, which required him to guaranty personally the
3 construction loan.³ (Appeal Letter, p. 3.)

4 Appellants contend that they were unable to pay their 2010 tax liability because
5 appellant-husband, as a personal guarantor, was legally obligated to repay the construction loan to the
6 bank. They assert that appellant-husband experienced financial difficulties in repaying the construction
7 loan due to the real estate crash, which had “disastrous effects on builders and developers.” They also
8 assert that the first 10 residential units “were available for purchase just after the overall real estate
9 market turned downward,” and appellant-husband repaid the construction loan over several years after
10 the projects were completed. Appellants further assert that appellant-husband repaid the construction
11 loan partly from the proceeds from the sale of constructed residential units to third-party purchasers,
12 “but largely due to the liquidation of other real estate assets,” including the refinance and foreclosure of
13 a lot in Piedmont, California and the liquidation of a building investment in Walnut Creek, California in
14 2010. With respect to the sale of the Walnut Creek building, appellants assert that appellant-husband
15 had a low tax basis and a significant capital gain of \$1,194,677, which appellants reported on their 2010
16 returns. They indicate that the sale of the Walnut Creek building did not result in any proceeds that
17 could be used to pay appellants’ 2010 tax liabilities because the bank effectively seized the proceeds to
18 pay off the balance of the construction loan. Appellants state, “The negative cash flow impact of these
19 intertwined events were unavoidable and significant; the failed real estate developments also deprived
20 [appellants] of the ordinary earned income they might otherwise have experienced from commercial
21 brokerage and other customary business efforts for which neither time nor money then existed.”
22 (Appeal Letter, pp. 3-6.)

23 Appellants contend that they would have been able to pay their 2010 California tax
24 liability by the due date if the State of California had not adopted a policy during the 2008-2010 period

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28 ³ In their opening brief, appellants refer to a construction loan and construction loans. For purposes of consistency, staff refers only to a construction loan.

1 of disallowing net operating loss (NOL) carry forwards (the policy),⁴ which “absolutely devastated
2 taxpayers such as [appellants], whose fortunes plunged during the economic downturn.” They indicate
3 that appellant-husband would not have been able to sell the residential units to third parties without the
4 cooperation of the bank, because its “lien securing the construction loan could not have been
5 reconveyed to clear title for the purpose of unit sales.” Appellants state, “Had he not paid the
6 Mechanics Bank, the overall situation would have been worse and personal bankruptcy unavoidable.”
7 Appellants claim that for tax years 2007, 2008, and 2009, they reported actual losses of \$1,970,230.10
8 from the real estate development activities consisting of the following: 1) for 2007, a loss of
9 \$651,440.00 related to Temescal Lofts, LLC and a loss of \$365,782.00 related to Temescal Row
10 Houses, LLC; 2) for 2008, a loss of \$183,599.00 related to Temescal Lofts, LLC and a loss of
11 \$2,015.00 related to Temescal Row Houses, LLC; and 3) for 2009, a loss of \$767,212.00 related to
12 Temescal Lofts, LLC and a loss of \$17,801.00 related to Temescal Row Houses, LLC.⁵ According to
13 appellants, they were unable to pay all of their tax liability on March 15, 2012, when they filed their
14 2010 returns, but they were finally able to pay all of their outstanding California tax liabilities in 2014.
15 (Appeal Letter, pp. 4-5.)

16 Appellants also contend that reasonable cause for the abatement of the late filing penalty
17 exists because they were unable to calculate their taxable income for 2010 due to the pending federal
18 audit of their 2007, 2008, and 2009 federal returns. Appellants assert that the Internal Revenue Service
19 (IRS) notified them on or about February 4, 2011, that they would be audited for these tax years due to
20 the massive losses they reported on Schedules C and E of their 2007, 2008, and 2009 federal returns.
21 Appellants assert that the extensive audit occurred during the time when they “might ordinarily have
22 put together their materials in preparation for and filing of [their] 2010 State and Federal income tax
23 returns.” They indicate that it was their belief and understanding that their 2010 taxable income “could
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25 ⁴ An NOL is the amount by which a taxpayer’s deductions exceed the taxpayer’s gross income. (Int.Rev. Code, § 172(c).)
26 For federal purposes, if a taxpayer had an NOL for a tax year ending in 2010, he or she must carry back the entire amount to
27 the two tax years prior to the NOL year and then carry forward any remaining NOL for up to 20 years following the NOL
28 year. (IRS Publication 536 (2010), “Net Operating Losses (NOLs) for Individuals, Estates, and Trusts,” p. 5. See also
Int.Rev. Code, § 172(b)(1)(A).)

⁵ Staff notes that the aggregate of these amounts total \$1,987,849.00, rather than \$1,970,230.10.

1 not be determined in the absence of a final outcome of the audit undertaken relative to their claimed
2 losses for each of three prior tax years.” Appellants contend that they “rationally believed” that federal
3 law and California law were consistent concerning their ability to offset gains with NOLs and they
4 relied on their tax advisors to help them prepare their tax returns and to resolve the exhaustive federal
5 audit. According to appellants, the federal audit was final on February 2, 2012, and they filed their
6 2010 federal and California returns approximately one month later. Appellants assert that the federal
7 audit “ultimately confirmed both the accuracy of all of the [claimed] itemized deductions and the extent
8 of [the] losses.” Appellants also assert that the IRS abated the late filing penalty and the late payment
9 penalty due to appellants’ good history of timely filing and timely paying, as indicated in the letter that
10 the IRS sent to appellants dated February 13, 2014. Appellants state that, even though the IRS did not
11 abate the penalties and interest due to reasonable cause, “the behavior evidenced by such act under the
12 overall circumstances together clearly confirm that reasonable cause existed.” (Appeal Letter, pp. 7, 9.)

13 Citing *United States v. Murdock* (1933) 290 U.S. 389, and *United States v. Cirillo*
14 (3rd Cir. 1957) 251 F.2d 638, cert. den. (1958) 356 U.S. 949, appellants argue that they did not act in
15 willful neglect of their obligation to file a tax return for 2010, because they did not act with a bad
16 purpose or evil motive. They also contend that the courts liberally construe the term “reasonable
17 cause” in favor of the taxpayer. Appellants claim that they filed their 2010 return soon after the audit
18 was final, they had no intent to hide their income, and “they attempted in every respect to fulfill their
19 civic duty to pay taxes actually due.” Attached to the appeal letter are copies of respondent’s
20 September 25, 2014 refund denial letter and appellant-husband’s declaration dated December 23, 2014,
21 which avers to the contentions set forth in the appeal letter. (Appeal Letter, pp. 10-11, attachments.)

22 Appellants argue that respondent apparently asserts that they should have filed a timely
23 inaccurate return during the pendency of the extensive federal audit and then filed an amended return if
24 necessary. Appellants state, “The fact that an accurate California Tax Return could not have previously
25 been filed should certainly constitute ‘reasonable cause’ and the failure to file an inaccurate tax return
26 (as the Franchise Tax Board in its Respondent’s Brief argues should have been done) cannot be deemed
27 a matter [of] ‘willful neglect.’” Appellants argue that taxpayers and tax preparers might expose
28 themselves to liability in California if they filed inaccurate original returns, as suggested by respondent.

1 Appellants assert that the 2010 California return requires the taxpayers to sign the return, attesting
2 under penalty of perjury that to the best of their knowledge and belief, the return is true, correct, and
3 complete. They also assert that the California return requires the transfer of “substantial and material
4 information” from the taxpayer’s federal return to the California return if the California return is to be
5 complete and accurate. Lastly, appellants assert that “a tax preparer can be penalized in monetary,
6 criminal, and ethical terms if that preparer has participated in the filing of a return which is incomplete
7 and/or inaccurate.” (App. Reply Br., pp. 3-4.)

8 Appellants do not specifically discuss interest abatement in their briefs.

9 Respondent’s Contentions

10 Respondent argue that it properly imposed the late filing penalty pursuant to R&TC
11 section 19131, because appellants filed their 2010 return on March 15, 2012, and appellants have not
12 shown reasonable cause for failing to file a timely 2010 return. Respondent contend that there is no
13 merit to appellants’ argument that they were unable to file federal and California returns for 2010 until
14 the IRS audit was completed due to uncertainty regarding the final status of NOLs from past tax years.
15 Respondent asserts that R&TC section 17276.21 provides that a taxpayer may not deduct NOLs for any
16 tax year beginning on or after January 1, 2008, and before January 1, 2012.⁶ According to respondent,
17 appellants’ 2009 returns “accounted for the change in law where their federal return reported [an NOL
18 of \$810,746] and their California return added the loss as a positive California income adjustment.”
19 Respondent asserts that appellants and their accountants were therefore on notice of this policy.
20 According to respondent, appellants used the same accounting firm to prepare their 2009 and 2010
21 returns. Respondent thus contends that appellants cannot persuasively argue that “they relied on their
22 accountants that they could report the [NOL] on their 2010 California return.” Respondent states that
23 appellants and their accountants were thus “aware that the outcome of the federal audit of their reported
24 [NOLs] would have no effect on their California return.” (Resp. Opening Br., p. 3, exhibits B, E.)

25 Respondent argues that a reasonable and prudent business person in appellants’ position
26 would have filed a timely 2010 California return and later would have filed an amended 2010
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⁶ R&TC section 17276.21 is effective October 19, 2010, and applicable to tax years beginning on or after January 1, 2010.

1 California return in the event that the federal audit materially affected the 2010 California return.
2 Citing *Appeal of Byron C. Beam*, 78-SBE-042, June 29, 1978,⁷ respondent contends that a taxpayer's
3 belief that he or she was not required to file a return does not constitute reasonable cause for failing to
4 file a timely return. Citing *Estate of Vriniotis v. Comm'r* (1982) 79 T.C. 298, 311, and *Beck Chemical*
5 *Equip. Corp. v. Comm'r* (1957) 27 T.C. 840, 859, respondent contends that "the law requires that the
6 taxpayer must estimate his tax liability based on the best information available and then later file an
7 amended return if necessary." Citing *United States v. Boyle* (1985) 469 U.S. 241, 251, respondent
8 contends that appellants' reliance on their accountants in failing to file a return by the statutory deadline
9 does not constitute reasonable cause because "reliance cannot function as a substitute for compliance
10 with an unambiguous statute." (Resp. Opening Br., pp. 3-4.)

11 Lastly, respondent argues that, notwithstanding appellants' arguments to the contrary,
12 reasonable cause for the failure to file a timely return is not established by an inability to pay tax based
13 on undue hardship. In contrast, respondent contends that, in certain situations, a taxpayer's failure to
14 pay tax based on undue hardship may constitute reasonable cause for the abatement of the late payment
15 penalty, which is not at issue in this appeal. Citing Treasury Regulation section 301.6651-1(c)(1),
16 respondent states, "In any event, a conclusion of economic hardship would require that the taxpayer
17 conserve sufficient assets in a marketable form to satisfy a tax liability and that they were nevertheless
18 unable to pay all or a portion of the tax when it became due."

19 With respect to interest abatement, respondent asserts that appellants are not entitled to a
20 refund of any accrued interest on the tax or the late filing penalty. Respondent argues that interest is
21 not a penalty, there is no reasonable cause exception to the imposition of interest, and interest is merely
22 compensation for the use of money owed to the State of California until the taxpayer pays it in full.
23 Respondent states that R&TC section 19104 authorizes respondent to abate interest based on its error or
24 delay in performing a managerial to ministerial act. Respondent contends, however, that appellants do
25 not allege and the evidence does not reflect any error or delay on respondent's part.

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28 ⁷ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 Applicable Law

2 Burden of Proof

3 The FTB's determinations are presumed to be correct, and a taxpayer has the burden of
4 proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 513; *Appeal of Michael E. Myers*,
5 2001-SBE-001, May 31, 2001.) This presumption is a rebuttable one and will support a finding only in
6 the absence of sufficient evidence to the contrary. (*Appeal of Oscar D. and Agatha E. Seltzer*,
7 80-SBE-154, Nov. 18, 1980.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden
8 of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

9 Late Filing Penalty

10 R&TC section 19131 provides that respondent shall impose a late filing penalty when a
11 taxpayer fails to file a tax return on or before its due date unless the taxpayer establishes that the late
12 filing was due to reasonable cause and was not due to willful neglect. The penalty is computed at five
13 percent of the tax due, after allowing for timely payments, for every month that the return is late, up to a
14 maximum of 25 percent. (Rev. & Tax. Code, § 19131.) The burden is on the taxpayer to establish
15 reasonable cause for the untimely filing. (*Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)
16 For these purposes, reasonable cause exists if it can be shown that the taxpayer acted as an ordinary
17 intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of*
18 *Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

19 Each taxpayer has a personal, non-delegable obligation to file his or her tax return by the
20 due date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985.) A taxpayer's
21 reliance on an agent, such as an accountant or a tax attorney, to file a return by the due date is not
22 reasonable cause. (*United States v. Boyle, supra*, 469 U.S. at p. 251.) In the *Appeal of Philip C. and*
23 *Anne Berolzheimer*, 86-SBE-176, decided on November 19, 1986, the Board held that a taxpayer's
24 reliance on a tax advisor must involve reliance upon substantive tax advice, not upon simple clerical
25 duties. Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a
26 late filing. (*Appeal of Diebold, Incorporated*, 83-SBE-002, Jan. 3, 1983.) A delay in filing due to the
27 complexity of the tax law that leads to a delay in computing a taxpayer's tax liability is not reasonable
28 cause. (*Appeal of Philip C. and Anne Berolzheimer, supra*; *Appeal of Roger W. Sleight*, 83-SBE-244,

1 Oct. 26, 1983.) Furthermore, the complexity and problems in accumulating the necessary information to
2 complete a return does not constitute reasonable cause. (*Appeals of Dynamic Speaker Corp., et al.*,
3 84-SBE-087, June 27, 1984; *Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982; *Appeal of*
4 *Avco Financial Services, Inc.*, 79-9SBE-084, May 9, 1979; *Appeal of Telonic Altair, Inc.*, 78-SBE-029,
5 May 4, 1978.)

6 Significant medical or personal problems might constitute reasonable cause for failing to
7 comply under some circumstances; however, the taxpayer must demonstrate a relationship between the
8 events and the failure to comply. (*Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9,
9 1985.) Specifically, the taxpayer must provide evidence that his or her difficulties prevented him or her
10 from timely meeting his or her tax obligations. (*Appeal of Allen L. and Jacqueline M. Seaman*,
11 75-SBE-080, Dec. 16, 1975.) If those difficulties merely made competing demands on the taxpayer's
12 time, such that the taxpayer could have timely met his or her tax obligations but chose not to, then the
13 taxpayer has not shown reasonable cause. (*Appeal of W.L. Bryant*, 83-SBE-180, Aug. 17, 1983.) The
14 taxpayer bears the burden of proof in showing that the difficulties experienced prevented him or her
15 from filing a timely return. (*Appeal of David and Marliee Duff*, 2001-SBE-007, Dec. 20, 2001.)

16 Interest Abatement

17 If a taxpayer fails to pay tax by the due date, or if respondent assesses additional tax, the
18 law imposes interest on the balance due. (Rev. & Tax. Code, § 19101.) The imposition of interest is
19 mandatory. (*Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977.) Interest is also mandatory with
20 respect to the imposition of a failure to file penalty pursuant to R&TC sections 19131. (Rev. & Tax.
21 Code, § 19101, subd. (c)(2)(B).) Interest is not a penalty but is simply compensation for a taxpayer's
22 use of money after the due date of the tax. (*Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.)
23 There is no reasonable cause exception to the imposition of interest. (*Id.*)

24 Under R&TC section 19104, respondent may abate all or a part of any interest on a
25 deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay

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1 committed by respondent in the performance of a ministerial or managerial act.⁸ (Rev. & Tax. Code,
2 § 19104, subd. (a)(1).) An error or delay can only be considered when no significant aspect of the error
3 or delay is attributable to the appellant and after respondent has contacted the appellant in writing with
4 respect to the deficiency or payment. (Rev. & Tax. Code, § 19104, subd. (b)(1).) There is no
5 reasonable cause exception to the imposition of interest. (*Appeal of Audrey C. Jaegle, supra.*) The
6 Board’s jurisdiction in an interest abatement case is limited by statute to a review of respondent’s
7 determination for an abuse of discretion.⁹ (Rev. & Tax. Code, § 19104, subd. (b)(2)(B).) To show an
8 abuse of discretion, the appellant must establish that, in refusing to abate interest, respondent exercised
9 its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Woodral v. Commissioner*
10 (1999) 112 T.C. 19, 23.) Interest abatement provisions are not intended to be routinely used to avoid
11 the payment of interest, thus abatement should be ordered only “where failure to abate interest would
12 be widely perceived as grossly unfair.” (*Lee v. Commissioner* (1999) 113 T.C. 145, 149.) The mere
13 passage of time does not establish error or delay that can be the basis of an abatement of interest. (*Id.* at
14 p. 150.)

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16 ⁸ In the *Appeal of Michael and Sonia Kishner*, 99-SBE-007, decided on September 29, 1999, the Board adopted the
17 language from Treasury Regulation section 301.6404-2(b)(2), defining a “ministerial act” as:

18 [A] procedural or mechanical act that does not involve the exercise of judgment or discretion, and that
19 occurs during the processing of a taxpayer’s case after all prerequisites to the act, such as conferences and
20 review by supervisors, have taken place. A decision concerning the proper application of federal tax law
(or other federal or state law) is not a ministerial act.

21 The Board has not yet adopted a definition for the term “managerial act.” However, when a California statute is
22 substantially identical to a federal statute (such as with the interest abatement statute in this case), the Board may consider
23 federal law interpreting the federal statute as highly persuasive. (*Appeal of Michael and Sonia Kishner, supra* (citing
Douglas v. State of California (1942) 48 Cal.App.2d 835).) In this regard, Treasury Regulation section 301.6404-2(b)(1)
24 defines a “managerial act” as:

25 [A]n administrative act that occurs during the processing of a taxpayer’s case involving the temporary or
26 permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A
27 decision concerning the proper application of federal tax law (or other federal or state law) is not a
28 managerial act.

⁹ Interest may also be abated under R&TC sections 19112 and 21012. Although R&TC section 21012 permits the
abatement of interest when a taxpayer relies on any written advice requested of respondent, appellant has not alleged any
reliance on written advice from respondent. Under R&TC section 19112, interest may be waived for any period for which
respondent determines that an individual or fiduciary demonstrates an inability to pay that interest solely because of extreme
financial hardship caused by a significant disability or other catastrophic circumstance. This statute does not provide any
authority for the Board to review the FTB’s determination whether to abate interest for an extreme financial hardship.

1 STAFF COMMENTS

2 Late Filing Penalty

3 The parties should be prepared to discuss whether appellants made a diligent and
4 reasonable effort to file their 2010 return by the April 15, 2011 deadline. Appellants contend that they
5 had reasonable cause for not filing their 2010 return by the April 15, 2011 deadline because they
6 experienced “significant financial burdens” due to the downturn of the real estate market and they were
7 subjected to an extensive IRS audit that created uncertainty as to the amount of their federal tax
8 liabilities for 2007, 2008, and 2009. To the extent that appellants argue that they were unable to pay
9 their 2010 tax liability due to their financial difficulties, the penalty at issue in this appeal is the late
10 filing penalty, rather than the late payment penalty. Appellants should be prepared to discuss at the oral
11 hearing why their financial difficulties from the real estate market’s downturn prevented them from
12 filing a 2010 return until March 15, 2012.

13 Respondent does not dispute that appellants’ failure to timely file their 2010 return was
14 not due to willful neglect. As discussed above, personal difficulties may be considered reasonable
15 cause in some cases but, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one
16 aspect of the taxpayer’s affairs to pursue other aspects, the taxpayer must bear the consequences of that
17 choice. Appellants may wish to clarify at the oral hearing whether they contend that they are entitled to
18 the abatement of the late filing penalty because they relied on substantive tax advice from their
19 accountants when they delayed filing the 2010 return until their federal audit for tax years 2007, 2008,
20 and 2009 was completed. (See *United States v. Boyle*, *supra*, 469 U.S. at pp. 249-250; *Appeal of*
21 *Philip C. and Anne Berolzheimer*, *supra*.) To the extent that appellants argue that they delayed filing
22 their 2010 return because they were not aware of the policy of not allowing an NOL carryforward, they
23 should be prepared to discuss respondent’s contention that their 2009 returns reflect their incorporation
24 of this policy.

25 Appellants argue that a determination of reasonable cause should be imputed by the
26 IRS’s administrative waiver of their federal penalties for 2010 based on their good history of
27 compliance with their filing and payment requirements. Internal Revenue Code section 6651 provides
28 for a late filing penalty “unless it is shown that such failure is due to reasonable cause and not due to

1 willful neglect.” Under Internal Revenue Manual section 20.1.1.3.6.1, however, the IRS may grant an
2 administrative waiver for a first-time abatement of a penalty on the basis of a taxpayer’s good filing
3 history. In contrast, the FTB does not have such authority. California law requires a finding of
4 reasonable cause for the abatement of the late filing penalty and there is no authority for the FTB to
5 follow the federal determination to abate appellants’ late filing penalty based on their good filing
6 history.

7 Interest Abatement

8 Appellants should be prepared to discuss whether they are arguing that they are entitled
9 to the abatement of accrued interest on their 2010 tax and/or the late filing penalty. If so, appellants
10 should provide factual arguments and legal authority in support of their position. If the Board
11 determines that appellants are entitled to abatement of the late filing penalty, then there would be no
12 interest due on the penalty, although appellants would still be liable for the accrued interest on the late
13 payment of their 2010 tax liability. Appellants do not appear to qualify for interest abatement under
14 R&TC section 19104 because they do not allege, and the evidence does not show, that the interest
15 imposed in this appeal is attributable in whole or in part to any unreasonable error or delay by an
16 officer or employee of respondent when performing a ministerial or managerial act. Appellants do not
17 appear to qualify for interest abatement under R&TC section 19112 because, among other things, they
18 already paid all of the interest imposed in this appeal. Lastly, appellants do not appear to qualify for
19 interest abatement under R&TC section 21012 because they do not allege, and the evidence does not
20 show, that they relied on any written advice requested of respondent with respect to the 2010 tax year.

21 If appellants have any additional documentary evidence to present, they should provide
22 it to the Board Proceedings Division at least 14 days prior to the scheduled oral hearing date pursuant to
23 California Code of Regulations, title 18, section 5523.6.¹⁰

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¹⁰ Documentary evidence should be send to: Khaaliq Abd’Allah, Board Proceedings Division, Board of Equalization,
P.O. Box 942879, MIC: 80, Sacramento, California 94279-0080.