STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Appeal of:	Case No. 693089
PETER ST. GEME AND POLLY PLUMER ST. GEME	Oral hearing date: March 25, 2015 Decision rendered: April 24, 2015 Publication due by: August 22, 2015

Representing the Parties:

For Appellants: Peter St. Geme and Polly Plumer St. Geme

For Franchise Tax Board: David Muradyan, Tax Counsel

Counsel for the Board of Equalization: Mai C. Tran, Tax Counsel III

LEGAL ISSUES

Whether the Franchise Tax Board's (hereafter FTB or respondent) proposed assessment was timely; and, if so, whether appellants have shown error in respondent's proposed assessment of tax which was based on a federal adjustment and whether appellants are entitled to the abatement of additional interest.

BACKGROUND

Appellants timely filed their California income tax return for the 2000 tax year, in which they reported California taxable income of $558,755 and a self-assessed tax of $48,455. After applying withholding credits and estimated tax payments, appellants paid the remaining balance due with their return. The Internal Revenue Service (IRS) subsequently audited and adjusted appellants' income for the 1997, 2000, 2001, 2002, and 2003 tax years. The IRS adjustments, which became final on April 6, 2006, resulted in additional federal tax for the 2000 tax year but overpayments in other years. The additional federal tax liability for the 2000 tax year was less than the overpayments transferred from

other tax years, so appellants received a federal refund.

According to appellants, they submitted a copy of the federal information, the Revenue Agent Report (RAR), to respondent on August 17, 2006. According to respondent, appellants submitted a copy of the RAR to respondent on September 13, 2006.

Based on the federal information, respondent examined appellants' 2000 tax account and issued a Notice of Proposed Assessment (NPA) for the 2000 tax year on September 10, 2008.[1] The NPA increased appellants' California taxable income for the 2000 tax year, resulting in a proposed assessment of additional tax of $914,847, plus interest and penalties. Following protest proceedings, respondent issued a Notice of Action in which respondent removed the penalties, and abated a portion of the accrued interest, but otherwise affirmed the NPA. Appellants then filed this timely appeal.

APPLICABLE LAW

Revenue and Taxation Code (R&TC) section 18622, subdivision (a), provides, in pertinent part, that if the IRS makes any changes or corrections to a taxpayer's federal return that would increase a taxpayer's California tax liability, then that taxpayer is required to report to the FTB each change or correction within six months after the final federal determination of the change or correction and concede the accuracy of the determination or state why it is erroneous. R&TC section 19059, subdivision (a), provides a two-year statute of limitations for the FTB to issue a deficiency when a taxpayer timely reports federal changes to the FTB.

FINDINGS OF FACT, ANALYSIS & DISPOSITION

A preponderance of the evidence demonstrates that appellants submitted the federal information to the FTB on August 17, 2006. This determination is supported by the following documentation:

- a letter from the FTB, dated July 13, 2007, which acknowledges the receipt of the RAR from appellant's former representative on August 17, 2006;
- facsimile header information found at the top of the RAR which reflects that appellants' former representative faxed the RAR on August 17, 2006; and
- an email dated August 6, 2007, from appellant-husband to his former representatives in which

[1] Respondent also made adjustments to other tax years, which conformed to the federal adjustments to the extent allowed under California law, but only the 2000 tax year is before us in this appeal.

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he indicated that the FTB stated it received information in August 2006. Respondent provides a copy of the RAR that was date stamped September 13, 2006, and points to internal records showing the date of this date stamp as the date the RAR was received. Respondent also provides an affidavit from an employee regarding its internal date stamping procedures. However, the employee has no personal knowledge regarding the actual date of receipt of the RAR. Respondent acknowledges that the July 13, 2007, letter is an official government record, and respondent did not subsequently notify appellants that it made a mistake in its July 13, 2007, letter. Weighing the evidence in the record, we find that a preponderance of the evidence, including the FTB's own July 13, 2007, letter, indicates that the RAR was received by the FTB on August 17, 2006.

The federal determination was final on April 6, 2006, and appellants timely submitted the federal information to respondent within six months on August 17, 2006. Accordingly, the two-year statute of limitations for respondent to issue a timely NPA, based on the federal information, expired on August 17, 2008. As respondent issued the NPA on September 10, 2008, the NPA was untimely pursuant to R&TC section 19059 because it was issued after the expiration of the statute of limitations. Accordingly, since the NPA is invalid, the remaining legal issues are moot.

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ORDER

Pursuant to the analysis of law and facts above, the Board ordered that the action of the FTB on appellants' protest against the proposed assessment for the 2000 tax year be reversed. Adopted at Sacramento, California, on this ___ of June, 2015.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member*

*For Betty Yee, pursuant to Government Code section 7.9.

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