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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 **EDWARD A. GALIGHER¹**) Case No. 824270

	<u>Proposed</u>
	<u>Assessment</u>
<u>Year</u>	<u>Additional Tax</u>
2004 ³	\$6,152

16 Representing the Parties:

17 For Appellant: Edward A. Galigher
18 For Franchise Tax Board: Jean M. Cramer, Tax Counsel IV

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22 ¹ Appellant and his ex-wife filed a joint 2004 California Resident Income Tax Return. Appellant, however, filed this appeal
23 in his name only; accordingly, this appeal will not refer to his ex-wife. Appellant lists an address in San Diego County,
24 California.

25 ² This appeal was noticed for oral hearing at the Board's April 26-28, 2016 meeting. However, appellant failed to reply to
26 the hearing notice and the matter was rescheduled for decision on the nonappearance consent calendar at the Board's
27 May 24-26, 2016 meeting. On March 15, 2016, appellant contacted the Board Proceedings Division and this matter was
28 placed back onto the Board's April 26-28, 2016 oral hearing calendar.

³ The Franchise Tax Board (FTB or respondent) states that the length of time between the year at issue (2004) and the filing
of this appeal is due to the lapse of time between appellant's protest and the FTB's position letter. The FTB states that it will
abate interest that accrued from October 1, 2009 (the date that the FTB received appellant's protest letter plus 6 months) to
February 28, 2014 (the date of the FTB's position letter).

1 QUESTION: Whether appellant has demonstrated error in the proposed assessment, which was based
2 upon a federal adjustment.

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4 HEARING SUMMARY

5 Background

6 Appellant and his ex-wife filed a timely joint 2004 California Resident Income Tax
7 Return, reporting a federal and California adjusted gross income (AGI) of \$2,393,931, less \$111,781 in
8 itemized deductions, resulting in a taxable income of \$2,282,150. Subsequently, the FTB learned that
9 the Internal Revenue Service (IRS) made an adjustment (increase) to the couple's 2004 federal return
10 for "Excess Miscellaneous Deductions" of \$66,151. On January 26, 2009, the FTB issued a Notice of
11 Proposed Assessment (NPA) that conformed to the federal adjustment by adding \$66,151 to appellant's
12 and his ex-wife's 2004 California taxable income, which increased appellant's 2006 taxable income
13 from \$2,282,150 to \$2,348,301. The NPA set forth an additional tax of \$6,152, plus applicable interest.
14 (FTB opening brief (FTB OB), pp. 1-2 & Exs. A-C.)

15 Appellant timely protested the NPA, arguing that the federal adjustment was "being
16 contested via audit reconsideration" and that he would keep the FTB informed as to the status of the
17 reconsideration. On December 5, 2013, the FTB received a fax from appellant asking about the status
18 of his protest. (FTB OB, p. 2 & Exs. D & E.)

19 In a letter dated February 28, 2014, the FTB requested that appellant provide
20 information as to the status of the federal reconsideration of the final federal determination. When
21 appellant did not respond to the FTB's letter, the FTB affirmed the NPA in a Notice of Action dated
22 April 23, 2014. In response, appellant filed this timely appeal. (FTB OB, p. 2 & Ex. F.)

23 Appellants' Contentions

24 Appellant argues, in a general manner, that the federal determination is erroneous and
25 biased and that he did not have the means to fight the federal assessment. He states that he wants a
26 "full accounting of the reasons and the method of taxation."

27 The FTB's Contentions

28 The FTB contends that its proposed assessment correctly conforms to the IRS's

1 adjustment. In support, the FTB provided a recent copy of appellant's federal transcript (dated July 16,
2 2014). The FTB contends that, generally, when an adjustment is made by the IRS to a federal return,
3 the California return is affected as well because the California return begins with the federal AGI,
4 which is used to compute California taxable income. The FTB states that R&TC section 18622
5 requires a taxpayer to concede the accuracy of the federal changes or to state wherein the changes are
6 erroneous. Also, the FTB states that deficiency assessments based on federal adjustments to income
7 are presumed to be correct and the taxpayer bears the burden of proving the FTB's determination is
8 erroneous, citing the *Appeal of Frank J. and Barbara D. Burgett*, 83-SBE-127, decided by the Board on
9 June 21, 1983.⁴ The FTB argues that appellant failed to provide evidence showing that the IRS's
10 adjustment (as set forth in the federal transcript) and the California assessment based thereon, were
11 made in error. Thus, the FTB contends that appellant failed to carry his burden of proving error. The
12 FTB contends that all taxpayers must be able to substantiate the deductions claimed on their return,
13 even if the production of documents may be difficult, citing the *Appeal of Wing Edwin and Faye Lew*,
14 73-SBE-053, decided by the Board on September 17, 1973. (FTB OB, p. 3 & Ex. G.)

15 The FTB contends that miscellaneous itemized deductions are job expenses and other
16 miscellaneous expenses that are deductible by individual taxpayers but cannot be categorized as
17 medical expenses, taxes, interest, charitable contributions, casualty and theft losses, or moving
18 expenses. In addition, the FTB contends that most miscellaneous itemized deductions are subject to a
19 2 percent floor (i.e., a reduction of the total deduction by 2 percent of AGI). The FTB asserts that
20 appellant has failed to provide any documentation in support of his assertion that he was entitled to any
21 of the disallowed miscellaneous itemized deductions. (FTB OB, p. 4.)

22 Applicable Law

23 Burden of Proof

24 A taxpayer must report federal changes to income or deductions to the FTB within six
25 months of the date the federal changes become final. (Rev. & Tax. Code, § 18622, subd. (a).) The
26 taxpayer must concede the accuracy of the federal changes or prove that those changes, and any
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⁴ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 California deficiency assessment based thereon, are erroneous. (Rev. & Tax. Code, § 18622, subd. (a);
2 *Appeal of Sheldon I. and Helen R. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Aaron and*
3 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) Unsupported assertions are not sufficient to satisfy a
4 taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

5 Miscellaneous Itemized Deductions

6 Deductions are a matter of legislative grace and the burden of proving the right to the
7 deduction falls upon the taxpayer. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of*
8 *Franklin E. and Barbara R. Walker*, 84-SBE-139, Sep. 12, 1984.) To carry the burden of proof, the
9 taxpayer must point to an applicable statute and show by credible evidence that the deductions claimed
10 come within its terms. (*Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986.)

11 Miscellaneous itemized deductions are defined as all itemized deductions other than
12 (1) the IRC section 163 interest deduction, (2) the IRC section 164 taxes deduction, (3) the deduction
13 for casualty, theft, and wagering losses under IRC section 165, (4) the IRC section 170 charitable
14 contribution deduction, (5) the IRC section 642(c) deduction for amounts paid or permanently set aside
15 for a charitable purpose, (6) the IRC section 213 medical expense deduction, and (7) any impairment-
16 related work expense deduction as defined under IRC section 67(d). (Int.Rev. Code, § 67(b).)

17 Miscellaneous itemized deductions specifically include, but are not limited to, otherwise deductible
18 unreimbursed employee expenses, otherwise deductible expenses for the production or collection of
19 income, otherwise deductible expenses for the determination of tax, and otherwise deductible expenses
20 related to IRC section 183 not-for-profit activities. (Treas. Reg. § 1.67-1T(a)(1).) IRC section 67(a),
21 however, limits an individual to deduct miscellaneous itemized deductions only to the extent that the
22 total of these deductions exceeds 2 percent of the individual's adjusted gross income.

23 Unreimbursed employee expenses, which have been specifically identified as not being
24 allowed in computing adjusted gross income, include expenses for items such as employee travel,
25 transportation, and lodging, business-related meals and entertainment, continuing education, union or
26 professional dues, subscriptions to professional journals, uniforms, job hunting, and the business use of
27 an employee's home. (Treas. Reg. § 1.67-1T(a)(1).)

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1 STAFF COMMENTS

2 At the oral hearing, appellant should be prepared to provide evidence showing that he
3 was entitled to the \$66,151 in miscellaneous itemized deductions which the IRS and the FTB
4 disallowed. On July 29, 2015, and again on October 26, 2015, the Appeals Division issued an
5 additional briefing letter, providing appellant with the opportunity to provide evidence to substantiate
6 the miscellaneous itemized deductions claimed on the return. Appellant failed to reply to either of
7 these requests. In addition, the Appeals Division notes that the only attachment to appellant's appeal
8 letter is the Notice of Action issued by the FTB. Pursuant to California Code of Regulations, title 18,
9 section 5523.6, if appellant has any additional evidence that he want the Board to consider, appellant
10 should provide such evidence to Board Proceedings at least 14 days prior to the oral hearing.⁵

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⁵ Evidence exhibits should be sent to: Khaaliq A. Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.