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7 **BOARD OF EQUALIZATION**  
8 **STATE OF CALIFORNIA**  
9

10 In the Matter of the Appeal<sup>1</sup> of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **STEVE HOBART BALL**<sup>2</sup> ) Case No. 629925  
13

	<u>Year</u>	<u>Proposed Assessment</u>
	2008	\$819 <sup>3</sup>

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15  
16 Representing the Parties:  
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18 For Appellant: Steve H. Ball  
19 For Franchise Tax Board: Rachel Abston, Senior Legal Analyst  
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22 <sup>1</sup> In a letter dated September 25, 2012, Board staff noted that the Franchise Tax Board (Respondent/FTB) issued the  
23 assessment at issue to more than one person (i.e., appellant and his wife (Karen S. Ball)) and, pursuant to section 5420 of the  
24 Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5420), each appellant who is filing the appeal must sign the appeal letter.  
25 Board staff received no documentation with appellant’s wife’s signature notifying the Board that she also intended to  
26 appeal. As Mr. Ball is the only individual who signed the appeal, we must treat this matter as an appeal by him alone;  
therefore, “Appellant” will refer only to Mr. Ball.

27 <sup>2</sup> Appellant resides in San Francisco.

28 <sup>3</sup> In its Opening Brief, the FTB stated that it will modify the proposed assessment for 2008, by including the taxable portion  
of the pension/annuities distribution of \$45,775, and not the total gross distribution of \$46,409 (which was in appellant’s and  
his wife’s federal adjusted gross income (AGI) of \$105,454). As a result, the FTB will revise the additional tax assessed  
from \$855 to \$819, as explained below. (Resp. Opening Br., p. 4, exhibits A, F, H, and I.) Regarding the different federal  
AGI amounts listed in exhibits H and I, an explanation is provided in footnote 4, below.

1 QUESTION: Whether appellant has shown that respondent's determination based on a federal  
2 audit report is incorrect.

3 HEARING SUMMARY

4 Background

5 Appellant and his wife filed a timely California tax return for the 2008 tax year. The  
6 couple reported federal adjusted gross income (AGI) of \$89,033, less net California adjustments  
7 (a reduction) of \$26,533, and itemized deductions of \$15,291, resulting in a taxable income of \$47,209,  
8 and tax of \$1,065. After subtracting exemption credits of \$396, appellant and his wife reported a tax  
9 liability of \$669. The couple reported withholding credit of \$900, and claimed an overpayment of  
10 \$231, which the FTB refunded. (Resp. Opening Br., p. 1, exhibit A.)

11 Later, the FTB received information from the Internal Revenue Service (IRS) that the  
12 IRS made adjustments to appellant's and his wife's 2008 federal return. Specifically, the IRS made  
13 adjustments for taxable dividends of \$124, capital gains of \$70, and a pension/annuities distribution of  
14 \$16,227. Based on the IRS information, the FTB issued a Notice of Proposed Assessment (NPA) on  
15 November 14, 2011, increasing appellant's and his wife's 2008 taxable income by the total adjustments  
16 of \$16,421 (i.e., \$124 + \$70 + \$16,227). This NPA increased appellant's and his wife's taxable income  
17 from \$47,209 to \$63,630, and proposed additional tax of \$855, plus interest. (Resp. Opening Br., p. 2,  
18 exhibits B and C.)

19 Appellant protested the NPA, claiming that appellant used a computer program to file  
20 the 2008 tax return and that the IRS's adjustment is wrong. Appellant attached a copy of the couple's  
21 2008 federal return to the protest letter, requesting that the FTB recalculate the total tax due based on  
22 the information provided in the return, and to "prove to [him] that [he] should pay more tax". (Resp.  
23 Opening Br., p. 2, exhibit D.)

24 The FTB responded stating that the NPA amount due was based on audit information  
25 that the FTB received from the IRS indicating that appellant's and his wife's federal AGI for 2008 was  
26 \$16,421 more than the couple reported on their 2008 California tax return. The FTB requested that, if  
27 the IRS cancelled or revised its adjustments, for appellant to provide the FTB with a copy of the revised  
28 IRS report or additional information to support appellant's position. Appellant did not respond to the

1 FTB's letter. Therefore, on July 30, 2012, the FTB issued a Notice of Action (NOA), affirming the  
2 NPA. This timely appeal followed. (Resp. Opening Br., p. 2, exhibit E; Appeal Letter, attachment.)

3 Contentions

4 Appellant's Contentions

5 On appeal, appellant contends that he disagrees with the FTB's assessment of additional  
6 tax for 2008, as well as the federal assessment the California assessment was based on. Appellant  
7 asserts that, according to his income and tax rate at his income level, he paid his tax obligations for  
8 2008. Appellant states that he is waiting for the FTB to show him in detail how the FTB assessed the  
9 additional tax. (Appeal Letter, p. 1.)

10 Respondent's Contentions

11 The FTB states that it obtained information from the IRS which showed that appellant  
12 and his wife had taxable dividends of \$124, dividends (capital gains) of \$70, and pension/annuities of  
13 \$16,227, that were not reported on the couple's state return. The FTB contends that to verify the  
14 federal information, the FTB obtained copies of wage and income statements from the IRS for  
15 appellant and appellant's wife for the 2008 tax year, as well as a copy of the couple's 2008 federal  
16 account transcript. The FTB states that for the 2008 tax year, appellant and his wife reported taxable  
17 dividends of \$388, total taxable IRA distributions of \$46,409, and total taxable pension/annuities of  
18 \$13,842. (Resp. Opening Br., p. 3, exhibits A, B, F, G, and H.)

19 Regarding the \$124 in taxable dividends, the FTB contends that according to appellant's  
20 wage and income statements, appellant received taxable dividends of \$264 from E\*TRADE Clearing  
21 House, \$100 from Ongko Met Enterprises Inc., and \$24 from Mellow Investors Services, for a total of  
22 \$388, while appellant's wife's wage and income statements show that she received \$124 in taxable  
23 dividends from E\*TRADE Clearing House, for a combined total of \$512 in taxable dividends. The  
24 FTB asserts that on their 1040 return, appellant and his wife reported taxable dividends of \$388 and,  
25 therefore, did not report appellant's wife's taxable dividends of \$124 (i.e., \$512 - \$388). The FTB  
26 notes that \$124 is the amount reflected as the income adjustment for taxable dividends on the couple's  
27 CP2000 federal audit report. (Resp. Opening Br., p. 3, exhibits B, F, and G.)

28 As for the \$70 in dividends (capital gains), the FTB asserts that appellant's and his

1 wife's wage and income statements verified that appellant received a \$70 dividend (capital gains) from  
2 Source Capital, which the couple did not report on their federal return. (Resp. Opening Br., p. 3,  
3 exhibit F.)

4           Concerning the \$16,227 in pension/annuities, the FTB contends that the couple's wage  
5 and income statements verified that appellant received \$46,409<sup>4</sup> in pension income from California  
6 Public Employees Retirement System, and that appellant's wife received pension income of \$16,227  
7 from Wells Fargo Investments LLC, as well as \$13,841 from PG&E Retirement Thrift, for a combined  
8 total pension income of \$76,478<sup>5</sup>. The FTB asserts that the couple reported pension income of \$60,251  
9 on their federal return and, therefore, did not report the wife's pension income of \$16,227 (i.e., \$76,478  
10 - \$60,251) from Wells Fargo Investments LLC. The FTB notes that \$16,277 is the amount reflected as  
11 the income adjustment for pension/annuities on the couple's CP2000 federal audit report. (Resp.  
12 Opening Br., p. 3, exhibits A, B, F, and G.)

13           The FTB contends that according to appellant's and his wife's federal Account  
14 Transcript, the IRS revised the couple's AGI to \$105,454, and taxable income to \$78,421, and based on  
15 the above unreported income information, assessed additional federal tax of \$3,811. The Account  
16 Transcript also shows that the entire liability was satisfied with an advance payment of \$4,066, made  
17 on December 3, 2010. The FTB contends that the Account Transcript does not reflect that the IRS  
18 canceled or revised the assessment and the assessment is final. (Resp. Opening Br., p. 3, exhibit H.)

19           The FTB asserts that appellant bears the burden of proof when the FTB bases a proposed  
20 assessment on a federal determination. (Citing *Appeal of Donald G. and Franceen Webb*, 75-SBE-061,  
21 Aug. 19, 1975; *Appeal of Wing E. and Fay D. Lew*, 78-SBE-073, Aug. 15, 1978; *Appeal of Sheldon I.*

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25 <sup>4</sup> The FTB notes that according to the couple's federal Account Transcript, the IRS revised appellant's and his wife's federal  
26 AGI to \$105,454, which includes the pension/annuities gross distribution of \$46,409, instead of the taxable amount of  
27 \$45,775, for a difference of \$634. The FTB's corrected Form 540 appears to correctly include only the \$45,775 taxable  
portion of the pension/annuities. Therefore, the FTB's revised federal AGI is \$634 less than the revised federal AGI  
determined by the IRS. As a result, the FTB will revise the additional tax assessed from \$855 to \$819, plus applicable  
interest. (Resp. Opening Br., p. 4, exhibits A and I)

28 <sup>5</sup> While the FTB's calculations show \$76,478 in a combined total pension income, the Board's calculations show \$76,477  
(i.e., \$46,409 + \$16,227 + \$13,841), for a difference of \$1, which is not a material difference.

1 *and Helen E. Brockett*, 86-SBE-109, June 18, 1986.)<sup>6</sup> (Resp. Opening Br., p. 4.)

2 Applicable Law

3 R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the  
4 accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency  
5 assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden  
6 of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett, supra*;  
7 *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy  
8 appellant's burden of proof with respect to an assessment based on federal action. (*Appeal of Aaron*  
9 *and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) In the absence of uncontradicted, credible,  
10 competent, and relevant evidence showing error in the FTB's determinations, they must be upheld.  
11 (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) An appellant's failure to  
12 produce evidence that is within his or her control gives rise to a presumption that such evidence is  
13 unfavorable to his or her case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

14 STAFF COMMENTS

15 In his appeal letter, appellant does not identify any errors in the federal  
16 determination or respondent's proposed assessment but he requests that respondent provide the detail of  
17 the calculation of the proposed assessment of additional tax. Respondent's opening brief provides  
18 detailed calculations which appear to be correct based on the documentation in the record. As stated  
19 above, appellant bears the burden of proving that the proposed assessment based on the federal  
20 adjustment, is erroneous. Appellant should be prepared to provide any documentation he may possess  
21 showing that the IRS has revised or cancelled its assessment for 2008. Appellant should also be  
22 prepared to provide any other documentation showing that the FTB's determination is incorrect.

23 Pursuant to California Code of Regulations, title 18, section 5523.6, if either party has  
24 any additional evidence to present, they should provide the evidence to the Board Proceedings Division  
25 at least 14 days prior to the oral hearing.<sup>7</sup>

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27 <sup>6</sup> Board of Equalization cases (designated "SBE") may generally be found at: [www.boe.ca.gov](http://www.boe.ca.gov).

28 <sup>7</sup> Evidence exhibits should be sent to: Claudia Madrigal, Appeals Analyst, Board Proceedings Division, State Board of  
Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.