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

10 In the Matter of the Appeal of:) **HEARING SUMMARY³**
11) **PERSONAL INCOME TAX APPEAL**
12 **FRANKLIN CASCO, JR.²**) Case No. 512009

	<u>Year</u>	<u>Proposed</u>
	2003	<u>Tax Assessment⁴</u>
		\$4,586

16 Representing the Parties:

17 For Appellant: Franklin Casco, Jr., appellant in propria persona
18 For Franchise Tax Board: Marvin H. Stroud, Legal Assistant

20 **QUESTION:** Whether appellant has demonstrated error in respondent's proposed assessment
21 based on federal adjustments to which appellant stipulated with the Internal
22 Revenue Service (IRS).

24 ¹ Mr. Kamp is no longer with the Appeals Division. The Appeals Division contact attorney is Lou Ambrose, Tax Counsel
25 IV, phone number (916) 445-5580 and email address lou.ambrose@boe.ca.gov.

26 ² Appellant resides in Irvine, Orange County.

27 ³ This oral hearing was postponed from the October 2010 Board meeting calendar at the appellant's request.

28 ⁴ According to the Notice of Action (NOA) dated September 8, 2009, interest in the amount of \$1,792.34 accrued through
that date.

1 HEARING SUMMARY

2 Background

3 Appellant timely filed his 2003 California resident personal income tax return (Form
4 540), reporting California Adjusted Gross Income (AGI) of \$1,216 and no taxable income.⁵ Respondent
5 subsequently received information from the IRS that it audited appellant's 2003 return and issued a
6 federal notice of deficiency that imposed additional federal tax liability. Appellant instituted a United
7 States Tax Court ("Tax Court") proceeding that resulted in the Tax Court on June 23, 2008 entering a
8 decision that resulted in a revised deficiency assessment, in accordance with an agreement between
9 appellant and the IRS. The Tax Court decision stated that appellant had a 2003 year federal tax
10 deficiency of \$24,594, and imposed the Internal Revenue Code (IRC) section 6662(a) accuracy-related
11 penalty in the amount of \$1,620. (See Respondent's Opening Brief, page 1, Exhibits C (IRS Notice of
12 Deficiency) and E (Tax Court decision).)

13 On August 13, 2008, respondent received from the IRS copies of documents reflecting
14 the June 23, 2008 Tax Court judgment. These documents indicated that appellant agreed to an upward
15 increase of \$78,628 in his federal taxable income for 2003, offset by a \$5,555 increase in the self-
16 employed AGI adjustment.⁶ As a result, appellant's 2003 federal taxable income increased by \$73,073.
17 Based upon this IRS and Tax Court information, and respondent's determination that the federal
18 adjustments represented categories of income taxable under California law, respondent on March 19,
19 2009 issued a Notice of Proposed Assessment (NPA) for additional 2003 tax of \$4,586, plus applicable
20 interest, based on a revised California taxable income of \$70,789. On April 27, 2009, appellant timely
21 protested the NPA, and in his protest letter argued that the FTB's "figures are incorrect" and that its
22 NPA was "untimely" under "section 6103(d)."⁷ On September 8, 2009, respondent issued a Notice of
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26 ⁵ Respondent's Opening Brief, Exhibits A and B (computer-generated return information).

27 ⁶ The adjustments appear to relate to income from a Schedule C business.

28 ⁷ Respondent's Opening Brief, Exhibit H. IRC section 6103(d) deals with the disclosure of federal return information to state and local agencies.

1 Action (NOA) affirming the NPA.⁸ This timely appeal followed.

2 Contentions

3 Appellant's Contentions

4 In his appeal letter, appellant argues that he was "assessed by the Federal Taxes Board"
5 and that the agency "lower[ed] their assessment" after appellant produced "supplemental
6 documentation." Appellant further argues that respondent's "assessment of \$6,378.34 for the year 2003
7 is unwarranted and unreasonable."

8 Respondent's Contentions

9 Respondent argues that the NPA and NOA are based upon the taxable income reflected in
10 the Tax Court decision and IRS Individual Master File (IMF), and respondent's California tax analysis
11 reflected in the mocked up sample corrected returns attached as Exhibits K and L to respondent's
12 Opening Brief. On the sample corrected federal return, respondent lists for appellant \$3,500 in line 21
13 "other income", and \$79,399 in Schedule C business income, offset by a \$3,000 capital loss, and \$5,610
14 in self-employment tax deduction, resulting in AGI of \$74,289. Respondent on the California sample
15 corrected return uses the \$74,289 federal AGI number, and subtracts therefrom the 2003 California
16 single filing status \$3,500 standard deduction, which results in \$70,789 California taxable income and a
17 total tax liability of \$4,586 (after taking into account appellant's personal exemption credit). (See
18 Respondent's Opening Brief, Exhibit K, pages 1-2 (sample federal return form 1040) Exhibit L (sample
19 California return).)

20 Respondent further contends that appellant has not established error in the presumptively
21 correct NPA based on the federal adjustments, nor has he submitted any evidence the IRS or the Tax
22 Court revised or cancelled the federal adjustments. Respondent argues that there is a rebuttable
23 presumption of correctness attached to an NPA based on a federal adjustment (*Appeal of Der*
24 *Wienschitzel International, Inc.*, 79-SBE-063, Apr. 10, 1979). In addition, respondent argues that
25 income tax deductions are a matter of legislative grace, and it is appellant's burden to show by
26 competent evidence any entitlement to claimed deductions. (*Appeal of James C. and Monablance A.*
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28 ⁸ The NOA states that the NPA was affirmed because appellant did not reply to a FTB letter dated July 14, 2009. This letter is not in the record on appeal.

1 *Walshe*, 75-SBE-073, Oct. 20, 1975; *New Colonial Ice Co. v. Helvering*, (1934) 292 U.S. 435, 436).
2 Respondent argues that because appellant has not pointed to an applicable statute or demonstrated
3 through competent evidence that he is entitled to any claimed but denied deductions (*Appeal of Robert*
4 *R. Telles*, 86-SBE-061, Mar. 4, 1986), he has not met his burden of showing error in the federal
5 assessments. (See Respondent’s Opening Brief, pages 2-3.)

6 In response to appellant’s argument during protest that the NPA was not issued on a
7 timely basis, respondent argues that IRC section 6103 is federal law and does not contain a statute of
8 limitations. Respondent further states the NPA was issued timely under R&TC section 19059,
9 subdivision (a), which establishes a limitations period of two years from the date when federal
10 adjustments are reported to respondent (by either the taxpayer or the IRS) within six months of the final
11 federal determination date. (See Respondent’s Opening Brief, pages 3-4 and Exhibit J, pages 1-2.)
12 Respondent argues that it received notice of the federal changes from the IRS on August 13, 2008;
13 appellant’s IRS IMF shows the federal adjustments became final on August 25, 2008, and the FTB
14 mailed the NPA on March 19, 2009, less than one year after respondent received notice from the IRS.
15 (See Respondent’s Opening Brief, page 3 and Exhibit M (page 3, transaction code 300).)

16 Applicable Law

17 R&TC section 17041, subdivision (a)(1) imposes the Personal Income Tax, defined in the
18 statute as a tax “. . . upon the entire taxable income of every resident of this state” R&TC section
19 17071 expressly incorporates IRC section 61, which in subsection (a)(2) thereof expressly states that:
20 “Except as otherwise provided in this subtitle, gross income means all income from whatever source
21 derived, including (but not limited to)...[g]ross income derived from business...”

22 R&TC section 19059, subdivision (a), states if the IRS reports federal changes to
23 respondent within six months of the final federal determination date, respondent may issue a NPA
24 “within two years from the date when the notice is filed with the FTB by the . . . Internal Revenue
25 Service . . .” Federal Treasury Regulation section 301.6203-1 provides that the date of a federal
26 assessment is the date the summary record of assessment is signed by an assessment officer.

27 A deficiency assessment based on a federal determination is presumptively correct and
28 the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and*

1 *Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)
2 Unsupported assertions are not sufficient to satisfy appellant’s burden of proof with respect to an
3 assessment based on federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17,
4 1982.)

5 STAFF COMMENTS

6 Timeliness of the NPA

7 There is no dispute that the NPA was issued timely on March 19, 2009; the federal
8 adjustments were reported to FTB by the IRS on August 13, 2008 and the NPA was issued within two
9 years of that date as required by R&TC section 19059, subdivision (a).

10 Federal Adjustments

11 The federal adjustments are included in both the Tax Court judgment and the IRS
12 adjustments document agreed to by appellant, and these adjustments are recorded in appellant’s IMF. In
13 support of his position, appellant’s only stated reason is that “I was assessed by the Federal Taxes Board
14 and after producing supplemental documentation they lower their assessment.” However, appellant has
15 the burden of proving error and has not presented any evidence or even described the supplemental
16 documentation. At the hearing, appellant should be prepared to present evidence demonstrating that the
17 federal adjustments were erroneous.

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