

1 Mai C. Tran  
2 Tax Counsel  
3 Board of Equalization, Appeals Division  
4 450 N Street, MIC: 85  
5 PO Box 942879  
6 Sacramento CA 95814  
7 Tel: (916) 324-8244  
8 Fax: (916) 324-2618

6 Attorney for the Appeals Division

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

10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **ANTONIO GALLO<sup>1</sup>** ) Case No. 595225  
13 )  
14 )

		Proposed Assessment	
			Estimated Post-Amnesty Penalty
	<u>Year</u>	<u>Tax</u>	
	2001 <sup>2</sup>	\$3,430.00	\$286.74

19 Representing the Parties:  
20 For Appellant: Min Oh, Tax Appeals Assistance Program (TAAP)<sup>3</sup>  
21 For Franchise Tax Board: Jean M. Cramer, Tax Counsel IV

23 **QUESTIONS:** (1) Whether appellant has established error in respondent's proposed assessment

25 <sup>1</sup> Appellant resides in Chatsworth, Los Angeles County.

26 <sup>2</sup> The length of time between the year at issue and the filing of this appeal is due to a federal audit that began in October 2003  
27 and ended with a federal assessment of additional tax on December 14, 2009.

28 <sup>3</sup> Appellant filed his own appeal letter. Vardan Balayan of TAAP filed appellant's reply brief. Min Oh of TAAP filed appellant's additional brief.

1 which was based on a federal assessment;

2 (2) Whether appellant is entitled to interest abatement; and

3 (3) Whether the Board has jurisdiction to review the proposed post-amnesty  
4 penalty.

5 HEARING SUMMARY

6 Background

7 Appellant filed a timely return for the 2001 tax year, claiming single filing status. On  
8 the return, appellant reported a California adjusted gross income (AGI) of \$9,004 and a California  
9 taxable income of \$6,044 that resulted in zero tax after subtracting the personal exemption credit.  
10 (Resp. Op. Br., p. 1, Ex. A.)

11 The Internal Revenue Service (IRS) subsequently audited appellant's 2001 federal  
12 income tax return. The federal audit determined that appellant underreported his Schedule C income  
13 for the 2001 tax year. On December 11, 2009, the IRS provided respondent with the federal audit  
14 information that increased appellant's Schedule C income by \$51,543. (Resp. Op. Br., p. 1, Ex. B.)

15 On May 5, 2011, respondent issued a Notice of Proposed Assessment (NPA) based on  
16 the federal adjustment and increased appellant's California taxable income by \$55,461 to \$61,505 (i.e.,  
17 \$6,044 + \$55,461). The NPA proposed an assessment of \$3,793 in additional tax and an estimate of  
18 the post-amnesty penalty,<sup>4</sup> plus interest. (Resp. Op. Br., p. 2, Ex. C.)

19 Appellant timely protested the NPA, disputing the proposed assessment and requesting  
20 abatement of a "late penalty" and interest because the federal actions were erroneous and he was not in  
21 business in 2001. Appellant also provided a letter from Quality Time Computers to support his  
22 assertion that, although the sales occurred in the 2000 tax year, he received the payments in the 2001  
23 tax year. In addition, the letter also stated that payments totaling \$20,000, were for the repayment of a  
24 loan.<sup>5</sup> (Resp. Op. Br., p. 2, Ex. D.)

25 \_\_\_\_\_  
26 <sup>4</sup> Respondent indicates that the post-amnesty penalty is an estimated amount and will be recomputed and imposed if and  
27 when the proposed deficiency assessment becomes a final assessment and the final deficiency amount exceeds any  
28 prepayments made before the end of the amnesty period.

<sup>5</sup> It appears that neither the IRS nor respondent included the reimbursement of \$20,000 as unreported Schedule C income.

1 Respondent acknowledged appellant's protest by letter dated August 22, 2011.  
2 Respondent explained that the proposed assessment was based on federal actions that subsequently  
3 had not been revised or revoked. Respondent also explained that, although the post-amnesty penalty  
4 was proposed, a late filing penalty was not imposed. In addition, respondent indicated that the  
5 assessment of interest is mandatory unless appellant meets one of the waiver provisions provided in  
6 the Revenue and Taxation Code (R&TC) sections 19104, 19112, or 21012. (Resp. Op. Br., p. 2, Ex.  
7 E.)

8 On September 26, 2011, respondent received a response letter from appellant which  
9 generally restated his protest arguments and stated that he was going to request reconsideration by the  
10 IRS. In addition, appellant submitted a copy of his IRS payment notice for \$200 due by August 28,  
11 2011. (Resp. Op. Br., p. 2, Ex. F.)

12 After reviewing the available information, respondent issued a Notice of Action (NOA)  
13 on October 17, 2011, revising the proposed assessment by allowing the self-employment tax deduction.  
14 Respondent reduced appellant's unreported Schedule C income by \$3,918 self-employment tax  
15 deduction to \$51,543 (i.e., \$55,461 - \$3,918), which reduced the additional tax to \$3,430. The estimated  
16 post-amnesty penalty was reduced to \$286.74. Appellant then filed this timely appeal. (Resp. Op. Br.,  
17 p. 2; Appeal Letter, Att.)

### 18 Contentions

#### 19 Appellant's Opening Brief

20 Appellant maintains that the amounts he received in 2001 were for sales made in 2000,  
21 and he was on an accrual method for filing taxes. Appellant also states that he received a payment for a  
22 loan he made to the same company. He asserts that an assessed tax based on a hundred percent profit  
23 margin is an obvious case of injustice and he should not be punished with penalties and interest.  
24 Appellant further contends he was unjustly audited multiple times by the IRS due to his sole  
25 proprietorship status and provided proof that the money he received was not income. Specifically,  
26 appellant submits a letter from Quality Time Computers dated March 1, 2005, stating that Quality Time  
27 Computers paid the following amounts totaling \$71,163.38 to appellant: \$35,144.05 on April 3, 2001;  
28 \$16,019.33 on April 3, 2001; \$10,000 on May 23, 2001; and \$10,000 on May 23, 2001. The letter also

1 stated that, of this amount, \$51,163.38 was paid for computer merchandise purchased from appellant  
2 during the first, second and third quarters of the 2000 tax year. The letter further indicated the  
3 remaining amount of \$20,000 was paid as reimbursement for appellant's payment to Merisel on behalf  
4 of Quality Time Computers during the first quarter of the 2000 tax year. Appellant also indicates that he  
5 is not working, it is extremely difficult to get a job, and he may soon be homeless. Appellant notes that  
6 he is currently making \$200 monthly payments to the IRS for his federal tax liability for the 2001 tax  
7 year. (Appeal Letter, Att.)

#### 8 Respondent's Opening Brief

9 With regard to the proposed assessment based on the federal audit, respondent contends  
10 that appellant failed to meet his burden of proving error in the federal changes, or error in respondent's  
11 actions based on those federal changes as required by R&TC section 18622. Respondent contends that  
12 it followed the federal adjustments to the extent allowable under California law. Respondent further  
13 contends a state deficiency assessment based on a federal report is presumptively correct and appellant  
14 bears the burden of proving error in the state adjustments. Respondent also asserts that a taxpayer's  
15 claim that he acquiesced to a federal adjustment based on economic reasons merely explains the  
16 taxpayer's motivation; it has no bearing on the correctness of the federal determination.

17 Respondent contends that appellant has not submitted any evidence of error in the federal  
18 actions or in respondent's proposed assessment that is based on those federal actions. Respondent  
19 asserts that appellant's unsupported statements are not sufficient to satisfy his burden of proof. (Resp.  
20 Op. Br., pp. 2-3.) In addition, respondent contends a review of appellant's federal Individual Master  
21 File (IMF) for the 2001 tax year indicates that the federal assessment of \$18,816 in additional tax was  
22 final on December 14, 2009. Respondent contends this amount is consistent with the deficiency  
23 assessment listed on the federal report. Respondent further notes that the IRS imposed a late filing  
24 penalty and an accuracy-related penalty on the same date. Lastly, respondent notes that the IRS has not  
25 subsequently abated or revised the federal adjustment or the federal penalties. (Resp. Op. Br., p. 3, Exs.  
26 B & H.)

27 With regard to appellant's contention that he is an accrual method taxpayer and the  
28 income should not be included in his 2001 return, respondent contends appellant has not provided any

1 documentation to support his contention. Respondent contends appellant does not dispute he received  
2 the unreported Schedule C income in 2001. Respondent contends that appellant mistakenly asserts that,  
3 as an accrual method taxpayer, appellant was not required to report this amount as income in 2001.  
4 Respondent notes that appellant indicated that he closed his computer store in the early part of 2000 and  
5 did not have a brick and mortar business in 2001 that would have generated business expense deductions  
6 in 2001 to offset business income. Respondent contends that, under Treasury Regulation section 1.446-  
7 1(c)(1), the cash method of accounting provides that any item of income that constitutes gross income is  
8 included in the taxable income for the year in which it is received. Respondent notes that Treasury  
9 Regulation sections 1.446-1(c)(1)(i) and (ii) further provide that, under the accrual method of  
10 accounting, income is to be included for the taxable year when all the events have occurred that fix the  
11 right to receive the income and the amount of the income can be determined with reasonable accuracy  
12 and a liability is taken into account in the tax year in which all events have occurred that establish the  
13 fact of the liability, the amount of the liability can be determined with reasonable accuracy, and  
14 economic performance has occurred with respect to the liability. (Resp. Op. Br., pp. 3-4.)

15 Respondent states that if appellant was an accrual method taxpayer, he should have  
16 reported the disputed income and any costs and expenses related to that income on a Schedule C  
17 attached to either his 2000 or 2001 income tax return. Respondent contends that appellant did not report  
18 the disputed Schedule C income or any offsetting deductions in the 2000 tax year as respondent's  
19 records indicate that appellant failed to file a California income tax return for the 2000 tax year.  
20 Respondent further contends appellant failed to include the disputed income on a Schedule C attached to  
21 his 2001 income tax return or provide documentation of any cost or expenses relating to that income  
22 during respondent's audit. Respondent therefore contends the IRS and respondent properly included the  
23 disputed income received in April 2001 in the year it was received (2001). Respondent notes that no  
24 deductions related to that income have been allowed because appellant has not provided any  
25 documentation to substantiate any deductions. (Resp. Op. Br., pp. 3-4, Ex. I.)

26 With regard to interest abatement, respondent notes that interest will be suspended from  
27 December 12, 2010 to May 20, 2011, in accordance with R&TC section 19116, subdivision (e)(1)(A).  
28 Respondent contends the balance of the accrued interest may not be suspended or abated. Respondent

1 contends that, while it may follow a federal abatement of interest accruing on a related deficiency based  
2 on a final federal determination of tax for the same period of time, respondent can only abate the state  
3 interest if the IRS abated the federal interest. Respondent notes that in this matter, the IRS did not abate  
4 any interest and therefore respondent may not abate any interest under R&TC section 19104,  
5 subdivision (a)(3). In addition, respondent contends appellant has not alleged or shown that respondent  
6 made an error or delay in performance of a managerial or ministerial act when processing appellant's  
7 case. Respondent further contends that no interest that accrued before respondent first contacted  
8 appellant in writing concerning the proposed assessment may be abated. Respondent notes that, as  
9 interest began accruing on April 15, 2002, and first written contact did not occur until May 5, 2011,  
10 respondent does not have discretion to abate interest accrued between these two dates. With respect to  
11 the remaining accrued interest, respondent contends there was no error or delay in processing the protest  
12 as appellant filed his protest on or about July 5, 2011 and respondent issued the NOA on October 17,  
13 2011, approximately three months after the protest was filed, which was more quickly than many similar  
14 protests. (Resp. Op. Br., pp. 4-5, Ex. H.)

15 With respect to the post-amnesty penalty, respondent contends the Board does not have  
16 jurisdiction to consider the post-amnesty penalty because the proposed deficiency assessment is not yet  
17 final and as a result, the post-amnesty penalty is not included in the proposed deficiency amount that is  
18 subject to this appeal, citing the *Appeal of Schillace*, 95-SBE-005, decided by the Board on August 2,  
19 1995.<sup>6</sup> Respondent contends that R&TC section 19777.5, subdivisions (e)(1) and (2), provide that once  
20 a post-amnesty penalty is assessed as a final liability and has been paid, a taxpayer may file a refund  
21 claim on the limited grounds that the amount paid to satisfy the penalty was not properly computed by  
22 respondent. (Resp. Op. Br., pp. 5-6.)

### 23 Appellant's Reply Brief

24 Appellant contends that he filed his 2000 income tax return and provides a copy of the  
25 return with his reply brief. Appellant contends that he maintained a business where he sold inventories  
26 to other retailers. As such, appellant was required to include the amount at issue on his federal tax return  
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28 <sup>6</sup> Board of Equalization cases may be found on the Board's website: [www.boe.ca.gov](http://www.boe.ca.gov).

1 for the 2000 tax year pursuant to Treasury Regulation section 1.446-1(c)(2)(i). In addition, appellant  
2 points to the March 1, 2005 letter from Quality Time Computers as proof that the checks paid for  
3 inventory sold in the 2000 tax year. In addition, appellant's quarterly sales and use tax reports for the  
4 2000 tax year demonstrate that appellant sold inventory in the second, third, and fourth quarters of the  
5 2000 tax year, totaling \$189,762. Appellant contends this amount includes the \$51,543 in inventory  
6 sold to Quality Time Computers. Appellant contends his sales and use tax returns reflect the nature and  
7 condition of his business in that appellant sold both retail goods and inventory to other companies in the  
8 first quarter while he only sold inventory in the second, third, and fourth quarters due to decreased retail  
9 sales. (App. Reply Br., p. 1, Att.)

10 Respondent's Reply Brief

11 Respondent acknowledges that appellant provided copies of his quarterly sales tax reports  
12 for the 2000 tax year, a copy of his 2000 income tax return and his Schedule C for the 2000 tax year.  
13 With regard to appellant's contention that the quarterly sales tax reports establish appellant was an  
14 accrual method taxpayer and he included the disputed income in gross sales reported on his Schedule C  
15 for the 2000 tax year, respondent notes that appellant's Schedule C reflects gross sales of \$257,569,<sup>7</sup>  
16 including sales subject to use tax of \$62,361 and sales to other retailers of \$189,762. Respondent  
17 contends that there is no way for the Board or respondent to verify whether all or part of the \$51,163.38  
18 in unreported income was included in the amounts reported on appellant's Schedule C. Respondent  
19 contends that for appellant to establish the disputed income was reported in 2000, appellant needs to  
20 provide the supporting documents for his quarterly sales reports or his Schedule C, such as shipping  
21 orders, purchase orders or invoices that list the date, amount and the merchandise being sold. With  
22 respect to the statement from Quality Time Computers, respondent contends the statement does not  
23 establish the amounts paid were included in the gross sales reported for the 2000 tax year. Respondent  
24 contends that, as neither appellant nor Quality Time Computers provided shipping orders, purchase  
25 orders, invoices, and copies of the checks indicated in the statement; appellant failed to establish that the  
26 amount at issue was included in the amounts reported on his quarterly sales tax reports or the income  
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28 <sup>7</sup> Respondent notes that it is unclear why appellant reported \$252,123 in gross sales to the Board while reporting \$257,569 in gross sales to the IRS and respondent on his Schedule C.

1 reported on his Schedule C for the 2000 tax year. (Resp. Reply Br., pp. 1-2.)

2 Appellant's Additional Brief

3 Appellant reiterates that he received checks totaling \$51,163.38 in 2001 for selling  
4 inventory in the previous year (2000). Appellant states that pursuant to the accrual method of  
5 accounting, appellant included this amount on his 2000 income tax return. Appellant contends he  
6 included the disputed amount of \$51,163.38 on his 2000 tax year when he sold the inventories, which  
7 fixed the right to receive income from such sale pursuant to Treasury Regulation section 1.446-  
8 1(c)(1)(ii). Appellant notes respondent acknowledged appellant provided the statement from Quality  
9 Time Computers, stating that it received merchandise in 2000. In addition, appellant points to his 2000  
10 tax year quarterly sales and use tax reports, in which appellant reported total sales of \$143,338, \$54,266,  
11 \$36,777, and \$17,742, respectively. Appellant contends these amounts show appellant included the  
12 disputed amount in his income tax return for the 2000 tax year. (App. Addl. Br., pp. 1-2.)

13 Applicable Law

14 Federal Adjustments

15 R&TC section 18622, subdivision (a), provides that taxpayers shall either concede the  
16 accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency  
17 assessment based on a federal audit report is presumptively correct and the appellants bear the burden of  
18 proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109,  
19 June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) While a taxpayer's claim that he only  
20 acquiesced in the federal adjustments because of coercion explains a taxpayer's motivation, it has no  
21 bearing on whether the federal determination was correct. (*Appeal of Robert J. and Evelyn Johnston*,  
22 75-SBE-030, Apr. 22, 1975; *Appeal of Ronald J. and Eileen Bachrach*, 80-SBE-011, Feb. 6, 1980;  
23 *Appeal of Barbara P. Hutchinson*, 82-SBE-121, June 29, 1982.) Unsupported assertions are not  
24 sufficient to satisfy the appellant's burden of proof with respect to an assessment based on federal  
25 action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) The appellant's failure to  
26 produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable  
27 to his case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.) In the absence of uncontradicted,  
28 credible, competent, and relevant evidence showing that respondent's determinations are incorrect, they

1 must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

2 Accrual Method

3 As described in Treasury Regulation section 1.446-1(c)(1), the two common forms of  
4 accounting methods are the cash and the accrual methods. Under the cash method, any item of income  
5 that constitutes gross income is included in the taxable income for the year in which it is received.  
6 (26 C.F.R. § 1.446-1(c)(1)(i).) Under the accrual method, “income is to be included for the taxable year  
7 when all the events have occurred that fix the right to receive the income and the amount of the income  
8 can be determined with reasonable accuracy.” (26 C.F.R. § 1.446-1(c)(1)(ii).)

9 Interest Abatement

10 Interest is not a penalty but is merely compensation for the taxpayer’s use of the money.  
11 (Rev. & Tax. Code, § 19101, subd. (a); *Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977; *Appeal*  
12 *of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) To obtain interest abatement, appellant must qualify  
13 under one of the following three statutes: R&TC sections 19104, 19112 or 21012. R&TC section  
14 21012 is not applicable because there has been no reliance on any written advice requested of  
15 respondent. Under R&TC section 19112, interest may be waived for any period for which respondent  
16 determines that an individual or fiduciary demonstrates inability to pay that interest solely because of  
17 extreme financial hardship caused by significant disability or other catastrophic circumstance. This  
18 section does not provide any authority for the Board to review the FTB’s determination whether to abate  
19 interest for extreme financial hardship.

20 Under R&TC section 19104, respondent may abate all or a part of any interest on a  
21 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.<sup>8</sup> (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 appellant and after respondent has contacted appellant in writing with respect  
4 to the deficiency or payment. (Rev. & Tax. Code, § 19104, subd. (b)(1).) There is no reasonable cause  
5 exception to the imposition of interest. (*Appeal of Audrey C. Jaegle, supra.*)

#### 6 Post-Amnesty Penalty

7 In 2004, the Legislature enacted Senate Bill 1100 which authorized respondent to  
8 institute an income tax amnesty program. (Rev. & Tax. Code, §§ 19730-19738.) Under R&TC section  
9 19777.5, there are essentially two amnesty penalties: one for unpaid liabilities that existed at the time of  
10 amnesty, and a second post-amnesty penalty based on subsequent assessments, including self-  
11 assessments. (Rev. & Tax. Code, § 19777.5, subds. (a)(1) and (a)(2).) As relevant to this appeal, the  
12 post-amnesty penalty is calculated as the amount equal to 50 percent of the interest computed under  
13 R&TC section 19101 on the tax underpayment for the period beginning on the last date prescribed by  
14 law for the payment of tax and ending on March 31, 2005. (Rev. & Tax. Code, § 19777.5, subd. (a)(2).)

15 The Board's jurisdiction to review an amnesty penalty is extremely limited. For  
16 example, a taxpayer has no right to an administrative protest or appeal of an unpaid amnesty penalty.  
17 (Rev. & Tax. Code, § 19777.5, subd. (d).) A taxpayer also has no right to file an administrative claim  
18 for refund of a paid amnesty penalty, except upon the basis that the penalty was not properly computed.  
19 (*Id.* subd. (e).) Therefore, the Board's jurisdiction to review an amnesty penalty is limited to situations  
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21 <sup>8</sup> In the *Appeal of Michael and Sonia Kishner*, 99-SBE-007, decided on September 29, 1999, the Board adopted the language  
22 from Treasury Regulation section 301.6404-2(b)(2), defining a "ministerial act" as:

23 [A] procedural or mechanical act that does not involve the exercise of judgment or discretion, and that  
24 occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and  
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.

25 The Board has not yet adopted a definition for the term "managerial act." However, when a California statute is substantially  
26 identical to a federal statute (such as with the interest abatement statute in this case),<sup>8</sup> the Board may consider federal law  
27 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 Regulations section 301.6404-2(b)(1) defines a "managerial  
act" as:

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

1 where the penalty is assessed and paid, the taxpayer files a timely appeal from a denial of a refund  
2 claim, and the taxpayer attempts to show a computational error in the penalty.

3 STAFF COMMENTS

4 Federal Adjustment

5 Appellant contends the federal adjustments to his 2001 tax return are in error because he  
6 included the amount of unreported Schedule C income in dispute on his 2000 federal return. Appellant  
7 explains that, as an accrual method taxpayer, he included the amount in dispute on his 2000 federal  
8 return because the amounts were attributable to sales of inventory made in 2000 even though the  
9 payments were received in 2001. Respondent contends that appellant has not established that the  
10 amount in dispute was included in the amounts appellant reported on his Schedule C for the 2000 tax  
11 year. While appellant's quarterly sales and use tax reports for the 2000 tax year indicate that he reported  
12 gross sales of \$252,123, including \$189,762 in sales to other retailers, appellant has not shown that all or  
13 part of the \$51,163.38 in unreported income was included in the amounts reported on his Schedule C.  
14 Appellant may wish to provide evidence such as copies of his shipping orders, purchase orders or  
15 invoices that list the date, amount and the merchandise being sold to establish that the income at issue  
16 was reported in the 2000 tax year. With regard to the letter from Quality Time Computers stating that it  
17 received merchandise in the first, second, and third quarters of 2000 for which it paid appellant  
18 \$51,163.38 by check on April 3, 2001, appellant may wish to provide the shipping orders, purchase  
19 orders or invoices related to these transactions. Appellant may also wish to provide a copy of the checks  
20 discussed in the letter from Quality Time Computers.

21 Interest Abatement

22 Appellant appears to request abatement of interest based on the amount of time it took for  
23 the federal audit to be completed and alleged misdeeds of the IRS. The interest accrued after  
24 respondent's first written contact with appellant may be abated if appellant establishes there was an  
25 unreasonable error or delay on the part of respondent in the performance of a ministerial or managerial  
26 act pursuant to R&TC section 19104. Any alleged misdeeds made by the IRS in connection with the  
27 federal audit do not appear to be related to respondent's actions. In addition, respondent's first written  
28 contact occurred on May 5, 2011, when respondent issued the NPA. Appellant filed his protest on or

1 about July 5, 2011 and respondent issued the NOA on October 17, 2011. It appears that respondent  
2 processed appellant's protest in a timely fashion as respondent issued its determination in the NOA  
3 approximately three months after appellant filed his protest.

4 Post-Amnesty Penalty

5 The Board's jurisdiction to review the amnesty penalty is limited to situations where the  
6 penalty is assessed and paid, the taxpayer files a timely appeal from a denial of a refund claim, and the  
7 taxpayer attempts to show a computational error in the penalty. Thus, the Board does not currently have  
8 jurisdiction to consider the post-amnesty penalty in this matter because the penalty has not yet been  
9 assessed and paid.

10 Additional Evidence

11 If either party has any additional evidence to present, they should provide their evidence  
12 to the Board Proceedings Division at least 14 days prior to the oral hearing pursuant to California Code  
13 of Regulations, title 18, section 5523.6.<sup>9</sup>

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<sup>9</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.