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BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**HEARING SUMMARY**
	PERSONAL INCOME TAX APPEAL
BERTHA GAFFNEY GORMAN[1]	Case No. 594551

Year	Proposed Assessment[2] Tax	Penalty
2005	$ 19,078.00[3]	$ 3,815.60

Representing the Parties:

For Appellant: Bertha Gaffney Gorman

For Franchise Tax Board: Thomas Grossman, Tax Counsel

QUESTION(S): (1) Whether appellant has established error in respondent Franchise Tax Board's (respondent or FTB) proposed assessment, which is based on a federal determination; and

(2) Whether appellant has demonstrated grounds for removal of the accuracy-related penalty.

[1] Appellant resides in Sacramento County.

[2] At the hearing, respondent should be prepared to provide the current amount of accrued interest.

[3] Appellant made payments totaling $15,000 on or about July 26, 2011. In its opening brief, respondent states it will apply these payments to appellants' account upon conclusion of this appeal.

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HEARING SUMMARY

Background

Appellant filed a timely California Resident Income Tax Return (Form 540) for the 2005 tax year, claiming head of household (HOH) status. On her return, appellant reported federal adjusted gross income (AGI) of $423,279, California adjustments (subtractions) totaling $1,631, a California AGI of $421,648, California itemized deductions of $30,019 and taxable income of $391,629. Appellant self-reported a total tax liability of $33,234 and reported withholding credits of $44,699 and an overpayment of $11,465 that respondent refunded with allowed interest on approximately November 3, 2006.[4] (Respondent's Opening Brief (Resp. Op. Br., p. 1, Ex. A & C.)

Subsequently, respondent received information from the Internal Revenue Service (IRS) that indicated federal adjustments made to appellant's wages and Schedule D increased appellant's federal taxable income by $199,338, resulting in a $30,648 federal deficiency. In addition, the IRS imposed an accuracy-related penalty of $6,129.60. Appellant did not inform respondent of these federal changes to her income. Respondent issued a Notice of Proposed Assessment (NPA) on April 15, 2011, in which respondent adjusted appellant's taxable income from $395,944 to $601,088 based on the inclusion of appellant's previously unreported Schedule D long term capital gain of $188,590, unreported wage income of $4,942, and disallowed itemized deductions of $11,612. After applying previously reported taxes assessed and paid, respondent proposed an additional $19,078 in tax and a $3,815.60 accuracy-related penalty, plus interest. (Resp. Open. Br., pp. 1-2, Ex. D; App. Op. Br., Attchmt.)

Appellant timely protested the NPA, asserting the NPA was incorrect because the IRS claimed higher capital gains on the sale of her Los Angeles duplex property than was reported on her Schedule D of her federal 2005 tax return. Appellant stated that her certified public accountant (CPA), Ms. Sheryl Garner, prepared her 2005 tax return because appellant's return was complex. Appellant stated that she believed her downstairs unit was listed as a second home where she stayed during

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[4] In May 2007, respondent denied appellant's HOH filing status and assessed additional tax of $1,558. According to respondent, that assessment is final and not at issue in this appeal, which explains why the "original or revised total tax" shown on the NPA was $34,792, as opposed to the tax of $33,234 reported on appellant's original return.

monthly visits to Los Angeles. Appellant states she did not receive income for that unit for more than two years and all utilities for that unit were paid in her name. When her attempted 1031 exchange failed, appellant released the tax funds to the IRS and to respondent. Appellant indicated that Ms. Garner closed her business several years ago and could not locate the supporting documents used to prepare the 2005 tax return. (Resp. Op. Br., p. 2, Ex. E.)

Respondent replied to appellant on July 6, 2011, stating appellant's correct federal AGI for 2005 was $616,811 and appellant reported her federal AGI on her California return as $423,279. Respondent further informed appellant the California adjustments were due to federal adjustments and requested that she provide information from the IRS if the IRS reduced her unreported income. In addition, if appellant was not contesting her federal liability, respondent requested that appellant explain why her state adjustments should be different from her federal adjustments where state law conformed to federal law. (Resp. Op. Br., p. 2, Ex. F.)

Appellant responded by letter dated July 21, 2011, and included payments totaling $15,000 as partial payment for the 2005 tax year. Respondent determined appellant did not demonstrate any change in the federal adjustment and issued a Notice of Action (NOA) on March 5, 2010, affirming the NPA. (Appeal Letter, Attachments.) Appellant then filed this timely appeal.

Contentions

Appeal Letter

Appellant states she is 71 years old and had to take a loan against her home to pay the federal and part of the state liabilities. She states the FTB received her 2005 California tax return, although the IRS denied receiving her 2005 federal tax return. Appellant indicates she does not understand the events leading up to the additional tax, interest, penalties and fees. Appellant states that Ms. Garner is currently unavailable to represent her in this matter because Ms. Garner now works for the IRS. Appellant provides correspondence between herself and Ms. Garner regarding the treatment of the sale of her Los Angeles property. Appellant provides an email from Ms. Garner indicating that the $129,269 loss reported on the Schedule E of appellant's federal tax return consisted of a $109,470 passive loss carried over from previous years and the current year (2005) loss of

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$19,799.[5] Ms. Garner indicated appellant was unable to take the passive activity losses in the years in which they occurred due to income limitations. However, as appellant sold the property in 2005, all unallowed passive activity losses were allowed in 2005. In addition, appellant provided the following additional documents: correspondence addressed to the FTB requesting the FTB to move a payment of $32,467 from appellant's 2006 tax year to 2005 tax year account; a letter addressed to the IRS agent who held the examination of appellant's federal return discussing scheduling matters; and a letter requesting the gas company to refund appellant a portion of utility bill because appellant sold the property in December of 2005. (Appeal Letter, Attachments.)

Respondent's Opening Brief

Respondent contends appellant failed to establish error in its proposed assessment based on a federal audit. Respondent contends, pursuant to Revenue and Taxation Code (R&TC) section 18622, its determination based on the federal assessment is presumed correct, and appellant has the burden of proof to show to overcome that presumption. Respondent asserts the NPA proposed additional tax based on the federal adjustments indicated on the federal report and the deficiency assessment as indicated in her federal IMF transcript. Respondent notes that a review of a recently obtained federal transcript does not indicate any additional abatement of the tax at the federal level nor does it indicate that appellant contests the additional federal liability. Respondent also notes the federal IMF transcript shows that appellant agreed to the assessment. (Resp. Op. Br., pp. 2-3, Ex. H.)

With respect to the accuracy-related penalty, respondent contends, when based on a federal action, its imposition of a penalty is presumptively correct, citing the *Appeal of Robert and Bonnie Abney*, 82-SBE-104, decided on June 29, 1982.[6] Respondent contends it properly imposed the accuracy-related penalty under R&TC section 19164 in the amount of $3,815.60 based on the underpayment of tax of $19,078 ($19,078 x 20% = $3,815.60). Respondent contends appellant did not submit any evidence to establish any defenses to the state accuracy-related penalty. Respondent further notes the IRS did not abate the federal accuracy-related penalty. (Resp. Op. Br., p. 3, Ex. H.)

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[5] The undated email is attached to appellant's appeal letter, behind a June 14, 2010 letter to the IRS in which appellant states she is attaching her former CPA's response to appellant's request that the former CPA look into her files.

[6] Board of Equalization cases may be viewed on the Board's website (www.boe.ca.gov).

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Appellant's Reply Brief

Appellant contends she relied upon her CPA's expertise in preparing her tax return accurately. Ms. Garner prepared appellant's state and federal tax returns from 1991 to 2005. As they lived in different cities, appellant sent supporting documents to Ms. Garner who then prepared the returns. Ms. Garner filed appellant's 2005 returns electronically and emailed a copy of the return to appellant. Appellant indicated Ms. Garner retained the original documents for the 2005 return. (App. Reply Br., pp. 1-2, Ex. 1 & 2.)

Appellant contends the IRS's claim that it did not receive appellant's federal 2005 return weighed significantly in the federal assessment of penalties and fees. In 2008, the IRS informed appellant they had not received her 2005 federal return. Appellant contacted Ms. Garner who advised appellant to resend the return. According to appellant, although she sent copies of her return to four different IRS offices, in May of 2009, appellant was notified that the IRS received $54,490 from her but they did not have her 2005 federal return in their records. After appellant resent the returns, appellant was informed on April 15, 2010, that she was selected for examination by IRS agent, Ms. Christina Gonzales. However, Ms. Garner was unavailable to represent appellant at the examination because she took a position with the IRS. (App. Reply Br., p. 3, Exs. 3-7.)

Appellant states that the IRS based its adjustment on a capital gain resulting from the 2005 sale of appellant's Los Angeles property. Appellant contends Ms. Garner made mistakes in preparing the tax return and the IRS disallowed certain deductions due to the lack of supporting documentation which appellant alleges was misplaced or lost by Ms. Garner. Appellant states the IRS did not accept appellant's explanation that the bottom duplex generated no income for more than two years prior to the sale and was used as appellant's second home. Appellant states the IRS also disallowed certain repair costs because of the lack of original documentation. Appellant states she settled the matter because she felt she had no choice as her CPA lost or misplaced the original documents on which the 2005 return was based.

According to appellant, the IRS agent, Ms. Gonzales, was rude, accusatory, threatening, and unprofessional. After appellant contacted Ms. Gonzales' supervisor, the capital gain was reduced from $256,088.00 to $188,590.00 and the federal amount due was reduced from $63,548.00 to

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$47,604.89. Appellant states she is confused and disturbed by respondent's addition of $1,558 for the denial of HOH filing status. Appellant states she provided documentation indicating she cared for her mother during 2007.[7] Appellant indicated that the CPA who prepared appellant's 2007 tax returns provided a Form 1099 for appellant's mother's homecare worker, Ms. Lorraine Rhone. (App. Reply Br., pp. 3-5, Exs. 7, 9, 10 & 11.)

Appellant contends she acted in good faith in filing her 2005 California and federal tax returns by using an experienced tax professional who prepared her returns for nearly 15 years. Appellant asserts the FTB erred in applying penalties and interest that were unduly influenced by the IRS's denial of certain deductions because the original documents and worksheets used to prepare the returns were misplaced or lost by Ms. Garner. In addition, appellant contends the FTB erred in discussing the HOH filing issue for 2007.[8] Appellant states she had several discussions with Ms. Garner in person and by email regarding the tax treatment of the Los Angeles property as a second home for the year 2005. Appellant asserts Ms. Garner was aware of the tenants in the lower apartment caused problems for many years which led to appellant's decision to stop renting it and instead, using it as her second home from 2003 through 2005. Accordingly, appellant requests the Board to reduce the proposed assessment, accuracy-related penalty, and interest based on the federal determination. However, appellant concedes the additional tax liability and interest resulting from unreported income of $4,942, which was a pay-out she received from her retirement fund when she retired. Appellant also contests the NPA for additional taxes of $1,558 based on the disallowed HOH filing status. (App. Reply Br., pp. 5-7, Exs. 8, 12 & 13.)

Applicable Law

Accuracy of Assessment

R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the

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[7] The only documentation appellant provided is an email from her CPA, Ms. Debra Young, who prepared appellant's 2007 tax return, requesting appellant to verify that appellant paid $3,800 to appellant's mother's home worker, Ms. Yvonne Rhone, in 2007.

[8] Appellant appears to have mistakenly equated the HOH filing status for 2005 tax year which was disallowed in 2007 with her claimed HOH filing status for the 2007 tax year. Appellant should be prepared to discuss the disallowed HOH filing status for the 2005 tax year if she still contests the disallowed HOH filing status for 2005.

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accuracy of a federal determination or state wherein it is erroneous. R&TC section 18622, subdivision (b), also provides that when a taxpayer files an amended federal return, she is required to file a California amended return within six months of the amended federal return if the change in the return increases the amount of the taxpayer's tax liability. It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and the appellant bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy an appellant's burden of proof with respect to an assessment based on federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Deductions from gross income are a matter of legislative grace and a taxpayer has the burden of proving entitlement to the deductions claimed; unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of James C. and Monablanche A. Walshe*, 75-SBE-073, Oct. 20, 1975.) While a taxpayer's claim that she only acquiesced in the federal adjustments because of coercion explains a taxpayer's motivation, it has no bearing on whether the federal determination was correct. (*Appeal of Robert J. and Evelyn Johnston*, 75-SBE-030, Apr. 22, 1975; *Appeal of Ronald J. and Eileen Bachrach*, 80-SBE-011, Feb. 6, 1980; *Appeal of Barbara P. Hutchinson*, 82-SBE-121, June 29, 1982.) In the absence of uncontradicted, credible, competent, and relevant evidence showing that respondent's determinations are incorrect, respondent's determination must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

Accuracy-Related Penalty

R&TC section 19164, which incorporates the provisions of IRC section 6662, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. As relevant to this appeal, the penalty applies to the portion of the underpayment attributable to (1) negligence or disregard of rules and regulations or (2) any substantial understatement of income tax. (Int.Rev. Code, § 6662(b).) The IRC defines "negligence" to include "any failure to make a reasonable attempt to comply" with the provisions of the code. (Int.Rev. Code, § 6662(c).) The term "disregard" is defined to include any "careless, reckless, or intentional disregard." (*Ibid*.) IRC section 6662 provides that a substantial understatement

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of tax exists if the amount of the understatement exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000. (Int.Rev. Code, § 6662(d)(1).) "Understatement" means the excess of the amount required to be shown on the return for the taxable year over the amount of the tax imposed which is shown on the return, reduced by any rebate. (Int.Rev. Code, § 6662(d)(2).)

There are three exceptions to the imposition of the accuracy-related penalty. Under the first exception, the penalty shall be reduced by the portion of the understatement attributable to a tax treatment of any item if there is substantial authority for such treatment. (Int.Rev. Code, § 6662(d)(2)(B).) Under the second exception, the penalty shall be reduced by the portion of the understatement attributable to a tax treatment of any item if the relevant facts affecting the item's tax treatment are adequately disclosed and there is a reasonable basis for the tax treatment of such item. (Int.Rev. Code, § 6662(d)(2)(B).) Under the third exception, the penalty will not be imposed to the extent that appellant shows a portion of the underpayment was due to reasonable cause and that she acted in good faith with respect to such portion of the underpayment. (Int.Rev. Code, § 6664(c)(1); Treas. Regs. §§ 1.6664-1(b)(2) & 1.6664-4.)

A determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis and depends on the pertinent facts and circumstances, including her efforts to assess the proper tax liability, her knowledge and experience, and the extent to which she relied on the advice of a tax professional. Generally, the most important factor is the extent of the taxpayer's effort to assess her proper tax liability. Reliance on the advice of a professional tax advisor does not necessarily demonstrate reasonable cause and good faith. However, reliance on professional advice constituted reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. (Treas. Reg. § 1.6664-4(b)(1).)

With respect to an underpayment attributable to reliance by a taxpayer on professional advice, the advice must not be based on unreasonable factual or legal assumptions and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. (Treas. Reg. § 1.6664-4(c)(ii).) For example, the advice must not be based on a representation or assumption which the taxpayer knows or has reason to know is unlikely to be true. (*Id.*) "Advice" is any communication, including the opinion of a professional tax advisor, setting forth the analysis or

conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, and does not have to be in any particular form. (Treas. Reg. §1-6664-4(c)(2).)

Reliance on advice of an expert tax preparer may, but does not necessarily, demonstrate reasonable cause and good faith. (*Stolz v. Comm'r*, T.C. Memo 1999-404.) Such reliance is not an absolute defense, but is a factor to be considered. (*Id*.) A taxpayer claiming reliance on a professional must show (1) the tax preparer was a competent professional who had sufficient expertise to justify reliance; (2) the tax preparer was supplied with necessary and accurate information; and (2) the taxpayer actually relied in good faith on the advice. (*Neufeld v. Comm'r*, T.C. Memo 2008-79, citing *Neonatology Assocs., P.A. v. Comm'r* (2000) 115 T.C. 43, 99.)

The taxpayer bears the burden of proving any defenses, such as substantial authority, disclosure and reasonable basis, and reasonable cause and good faith. (*Recovery Group, Inc. v. Comm'r*, T.C. Memo 2010-76.) An absence of records, due to loss or destruction, cannot standing alone establish that a taxpayer's deductions were founded on reasonable cause and good faith when made. (*Xuncax v. Comm'r*, T.C. Memo 2001-226.) Alleged mistreatment of the taxpayer by the IRS is not relevant to whether the taxpayer has established the existence of reasonable cause because the reasonable cause exception is focused on the taxpayer's actions, not the IRS's actions. (*Moss v. Comm'r* (T.C. 2010) 135 T.C. 365, 373.)

HOH Filing Status

R&TC section 17042 sets forth the requirements for HOH filing status by reference to IRC sections 2(b) and 2(c).[9] As pertinent to this appeal, to be considered as a HOH for the 2005 tax year, IRC section 2(b)(1) provides that the taxpayer must be unmarried at the close of the taxable year and must maintain a household that constitutes the principal place of abode, as a member of such household,

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[9] IRC section 2(c) concerns married taxpayers, so it does not appear to apply to appellant.

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of a qualifying person[10] for more than one-half of the year. A taxpayer will be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by the taxpayer. (Int.Rev. Code, § 2(b)(1).)[11] The taxpayer may not be considered HOH if at any time during the tax year, appellant is a nonresident alien. (Int.Rev. Code, §2(b)(3)(A).) In addition, the taxpayer must show that she is entitled to a dependent exemption deduction for the taxable year for her qualifying person. To qualify for a dependent exemption deduction, the taxpayer must generally show that (1) her qualifying person cannot be claimed as a dependent by another taxpayer; (2) her qualifying person did not file a joint federal return with his or her spouse; and (3) for some part of the year, the taxpayer's qualifying person must be a citizen or national of the United States or a resident of the United States, Canada, or Mexico. (Int.Rev. Code, §152(b).) In addition, the taxpayer must show that her qualifying person's gross income in 2005 was less than $3,200. (Int.Rev. Code, §§ 152(d) and 151(d).) Respondent's determination of filing status is presumptively correct and the taxpayer has the burden of proving that she is entitled to HOH filing status. (*Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.) This presumption of correctness is not overcome by unsupported statements of the taxpayer. (*Id.*) In the absence of uncontradicted, credible, competent, and relevant evidence showing that the FTB's determinations are incorrect, they must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, *supra*.)

STAFF COMMENTS

Federal Assessment

In appellant's reply brief, appellant concedes the additional tax liability and interest resulting from unreported income of $4,942, which was a pay-out she received from her retirement fund when she retired. However, appellant contends the remaining portion of the proposed assessment is erroneous because respondent based its assessment on a federal audit that made a mistake in adjusting

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[10] A qualifying person for an unmarried taxpayer includes the following individuals: (1) birthchild; (2) stepchild; (3) grandchild; (4) adopted child; (5) foster child; (6) parent; (7) grandparent; (8) brother; (9) sister; (10) half-brother; (11) half-sister; (12) stepbrother; (13) step sister; (14) step father; (15) stepmother; (16) son-in-law; (17) daughter-in-law; (18) father-in-law; (19) mother-in-law; (20) uncle; (21) aunt; (22) nephew; and (23) niece. (Int.Rev. Code, §§ 152(c) and (d).) An uncle or aunt must be the brother or sister of the taxpayer's father or mother. (Int.Rev. Code, § 152(d)(2)(F).) A nephew or niece must be the son or daughter of the taxpayer's brother or sister. (Int.Rev. Code, § 152(d)(2)(E).)

[11] If the taxpayer claims his or her parent as the qualifying person, the parent does not have to live with the taxpayer. However, the taxpayer must have paid more than half the cost of keeping up the home that was the parent's main home for the entire tax year. (Int.Rev. Code, §2(b)(1)(B); Treas. Reg. §1.2-2(c)(2).)

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the capital gain on the sale of her Los Angeles property. Appellant argues that, because of a lack of original documentation, the IRS disallowed certain deductions which increased the amount of capital gain on the sale of her property.

At the hearing, appellant should be prepared to discuss the details of the sale of the property. Appellant provided an email from her former CPA, Ms. Garner, discussing accrued passive activity losses from previous years which were applied to the 2005 tax year at issue. Appellant should be prepared to discuss how this email is relevant as it appears the IRS allowed these claimed passive activity losses. Appellant may wish to provide the documentation (if any) that she provided to the IRS during the federal examination. Appellant should be prepared to discuss what deductions she believes the IRS disallowed. Appellant may also want to discuss the allegedly disallowed federal deduction for repairs. In appellant's exhibits, appellant mentions a lawsuit against her former tenants. Appellant may wish to discuss the circumstances of that lawsuit and whether legal fees incurred were included in the disallowed federal deductions. Respondent should be prepared to discuss under what circumstances appellant may be entitled to an adjustment for disallowed deductions (if any) for repairs and legal fees.

Accuracy-Related Penalty

Respondent imposed the state accuracy-related penalty in accordance to the imposition of the federal accuracy-related penalty on appellant's 2005 tax year. Appellant's total tax required to be shown on appellant's state tax return is $53,870. Since the understatement of income tax ($19,078) exceeds the greater of 10 percent of the tax required to be shown on the return (i.e., $53,870 x 10% = $5,387) or $5,000, appellant has a substantial understatement. Unless one of the exceptions to the penalty is applicable, it appears that respondent properly imposed the accuracy-related penalty.

Both parties should be prepared to discuss whether any of following exceptions to the accuracy-related penalty applies to appellant's circumstances: (1) there is substantial authority for her position; (2) whether there was adequate disclosure of the position and there is a reasonable basis for the position; or (3) whether there was reasonable cause for the understatement and appellant acted in good faith. Appellant states that she relied on her experienced CPA, Ms. Garner, to properly report the sale of her Los Angeles property.

Respondent will want to address appellant's reasonable cause argument in more detail

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and with specific reference to the documents provided by appellant with her appeal letter and with her final brief. Both parties should address whether appellant has shown that she provided all relevant information to the CPA prior to the preparation of the tax return at issue. In this connection, the parties should be prepared to discuss the letters dated October 21, 2005, July 31, 2006, and April 7, 2006, and addressed to her former CPA, Ms. Garner, which are attached to appellant's reply brief as Exhibits 8A, 8B and 8C. If appellant has or can obtain any confirming documentation that such letters were sent, such as mailing receipts or responses from Mr. Garner, she should provide such documentation. Appellant states that she requested Ms. Garner's advice by email and in person regarding whether she may treat the lower portion of the property as her second home as she stayed there during her monthly trips to Los Angeles. In general, appellant will want to provide any available evidence of emails or other communications from Ms. Garner that appellant relied on prior to signing her 2005 tax return. In this connection, both parties should be prepared to address the email from Ms. Garner to appellant regarding the passive loss carry forward that appellant provided with her appeal letter. [12]

HOH Filing Status

Appellant also contests the additional taxes of $1,558 based on the disallowed HOH filing status. Appellant indicates that she claimed HOH filing status based on her mother. Although respondent states that appellant's filing status is not an issue in this appeal, the assessment at issue in part relies on the single filing status and is contested by appellant. Respondent should be prepared to discuss both the merits of the HOH filing status claim and whether appellant should be barred from pursuing the claim in the present appeal.

Staff notes that respondent provided a copy of appellant's 2005 HOH Schedule as Exhibit B to respondent's opening brief. Appellant claimed her mother, Vivian Gaffney, as her qualifying person for HOH filing status. Appellant also reported that her mother was not a U.S. citizen

[12] It is not clear whether the email was sent prior to appellant's signing of her tax return or later during the IRS audit. It is attached to appellant's appeal letter, behind a June 14, 2010 letter to the IRS in which appellant states she is attaching her former CPA's response to appellant's request that the former CPA look into her files regarding the files requested by the IRS. The print-out or copy of the email does not show when the email was sent. Appellant also attached a copy of the same email as Exhibit 7 to appellant's reply brief with the explanation that the email discussed the passive losses which the IRS agent, Ms. Gonzales, asked about during a three-way telephone discussion between appellant, Ms. Garner, and Ms. Gonzales. At the hearing, appellant should be prepared to clarify when the email was sent, and, if a copy of the email is available that shows the date sent, a copy of such e-mail should be provided.

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or national, or a resident of the U.S., Canada, or Mexico, which may have lead to the denial of HOH filing status, because the relevant statute requires that the qualifying person be a U.S. citizen or national, or a resident of the U.S., Canada, or Mexico.

In appellant's reply brief, appellant protests the HOH filing status for 2007 tax year. Appellant should clarify whether she is protesting the HOH filing status for the current year at issue (2005) which respondent disallowed in May 2007. Staff notes that the only evidence provided by appellant regarding HOH filing status is an email discussion in January 2008 between appellant and the CPA who prepared appellant's 2007 tax returns, in which the CPA requested appellant to verify the amount paid in 2007 to Lorraine Rhone, appellant's mother's caretaker. In the email discussion, appellant indicates she hired Ms. Rhone effective July 1, 2007 and paid her $3,800 in 2007 and she would review her cancelled checks to verify the amount paid to Ms. Rhone. If appellant wishes to further pursue HOH filing status for the 2005 tax year, she should be prepared to explain whether, as indicated in the 2005 HOH Schedule, appellant's mother was not a U.S. citizen or national, or a resident of the United States, Canada, or Mexico. If the Schedule is correct in this regard, it appears that appellant may have failed the requirements for HOH filing status for this reason. Both parties should be prepared to address whether this requirement, as well as whether the other requirements of HOH filing status, were met by appellant for the 2005 year.[13]

Additional Evidence

Pursuant to California Code of Regulations, title 18, section 5523.6, if either party has any additional evidence to present, they should provide their evidence to the Board Proceedings Division at least 14 days prior to the oral hearing.[14]

Gorman_mt

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[13] To establish HOH filing status, it would need to be established that: appellant was unmarried as of December 31, 2005; she was not a nonresident alien at any time during the tax year; she maintained a household that constitutes the principal place of abode for her mother; she paid more than half the cost of maintaining the household; her mother cannot be claimed as a dependent by another taxpayer; that her mother did not file a joint federal return with her spouse; her mother was a citizen or national of the United States or a resident of the United States, Canada, or Mexico; and that her mother's gross income in 2005 was less than $3,200.

[14] 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.

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