

1 William J. Stafford  
2 Tax Counsel III  
3 Board of Equalization, Appeals Division  
4 450 N Street, MIC:85  
5 PO Box 942879  
6 Sacramento CA 95814  
7 Tel: (916) 206-0166  
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 **JERRY JONES**<sup>1</sup> ) Case No. 547938

13 \_\_\_\_\_  
14 Year Proposed  
15 2006 Assessment  
16 \$558

16 Representing the Parties:

18 For Appellant: Jerry Jones  
19 For Franchise Tax Board: Rachel Abston, Legal Analyst

21 **QUESTIONS:** (1) Whether the proposed assessment is barred by the statute of limitations.  
22 (2) Whether appellant has demonstrated error in the underlying tax assessment.

23 **HEARING SUMMARY**

24 Background

25 Appellant filed a timely 2006 California income tax return, reporting (i) federal adjusted  
26 gross income (AGI) of \$89,788, (ii) California itemized deductions totaling \$34,101, of which \$3,000

28 <sup>1</sup> In his appeal letter, appellant lists an address in San Mateo County, California.

1 was attributable to gambling losses (see Schedule CA, Part II), (iii) California taxable income of  
2 \$53,635, and (iv) an overpayment and refund due of \$2,457, which the FTB refunded. (FTB Opening  
3 Brief (FTB OB), p. 1 & Exh. A.) Appellant also filed a 2006 federal income tax return, reporting,  
4 among other things, federal itemized deductions totaling \$36,959, of which \$3,000 was attributable to  
5 gambling losses. (FTB OB, Exh. A (federal Schedule A).)

6 Later, the FTB examined appellant's federal and California returns and determined that  
7 because appellant did not report any gambling winnings on either his federal or California returns,  
8 appellant's California itemized deduction for gambling losses should not have been allowed. (FTB OB,  
9 p 2.) Accordingly, on February 3, 2009, the FTB issued a Notice of Proposed Assessment (NPA) that  
10 added the following amounts to appellant's 2006 California taxable income: (a) a "math error"  
11 correction of \$3,000, which occurred when the \$3,000 California adjustment was subtracted from  
12 federal AGI when it should have been added to federal AGI and (b) \$3,000, which represents the FTB's  
13 disallowance of additional California itemized deductions for gambling losses that were reported on  
14 appellant's California Schedule CA, Part II. (FTB OB, Ex B.) The NPA listed an additional tax of  
15 \$588, plus interest.<sup>2</sup> (*Id.*)

16 Appellant timely protested the NPA, arguing that his return was correct and the FTB  
17 incorrectly counted the \$3,000 adjustment twice. (*Id.*) In response, the FTB sent appellant a letter dated  
18 May 12, 2010, explaining:

19 \*\*\*\*\* You must include 'Lottery Winnings' in the federal adjusted gross income prior to  
20 the deduction being claimed on the state return. Because no income was included in the  
21 federal adjusted gross income, the 'Lottery Losses' must be subtracted from the  
California itemized deductions. \*\*\*\*\*

22 Subsequently, the FTB affirmed its assessment in a Notice of Action (NOA) issued on July 27, 2010.  
23 Appellant then filed this timely appeal. (FTB OB, p 2.)

#### 24 Contentions

##### 25 Appellant

26 Appellant argues that his 2006 California tax return as filed is correct. In addition,  
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28 <sup>2</sup> The FTB states that it suspended interest under the provisions of R&TC section 19116. As interest is not an issue in this appeal, we will not discuss or analyze the provision of R&TC section 19116.

1 appellant asserts that it took over four years for the FTB to contact him. (See App. Ltr.)

2 The FTB

3 The FTB makes two arguments: First, the FTB argues that it issued the NPA in a timely  
4 manner and, therefore, the proposed assessment is not barred by the statute of limitations. (FTB OB,  
5 p 4.)

6 Second, the FTB argues that appellant has not demonstrated error in the FTB's proposed  
7 assessment. The FTB notes that gambling losses are only allowed to the extent of gambling winnings.  
8 And the FTB asserts that "Because your federal AGI . . . did not include any gambling income, you  
9 incorrectly claimed gambling (lottery) losses on Schedule A and incorrectly claimed your lottery losses  
10 a *second* time on line 41 of your Schedule CA." (FTB OB, p 3, emphasis supplied.) In short, the FTB  
11 argues that it correctly added \$6,000 to appellant's California taxable income.

12 Applicable Law

13 Statute of Limitations

14 In general, the FTB must issue an NPA within four years of the date the taxpayer filed his  
15 or her California return. (Rev. & Tax. Code, § 19057.) Returns filed before the original due date of a  
16 personal income tax return are considered as filed on the original due date. (Rev. & Tax. Code,  
17 § 19066.)

18 Gambling Losses

19 Revenue and Taxation Code (R&TC) section 17201 conforms California law in regard to  
20 the deduction of gambling losses to federal law. Internal Revenue Code (IRC) section 165(d) allows  
21 taxpayers to deduct gambling losses only to the extent of gambling winnings reported as income. The  
22 FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error.  
23 (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Aaron and Eloise Magidow*, 82-SBE-274,  
24 Nov. 17, 1982.)<sup>3</sup> Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof.  
25 (*Appeal of Aaron and Eloise Magidow, supra.*)

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28 <sup>3</sup> Board of Equalization cases are generally available for viewing on the Board's website ([www.boe.ca.gov](http://www.boe.ca.gov)).

1 STAFF COMMENTS

2 Statute of Limitations

3 Appellant filed his 2006 return by the original due date of April 15, 2007. Thus, the FTB  
4 had until April 15, 2011, to issue the NPA. Here, the FTB issued the NPA on February 3, 2009.  
5 Accordingly, the NPA was issued in a timely manner.

6 Gambling Losses

7 Here, the FTB's assessment added the following amounts to appellant's 2006 California  
8 taxable income: (a) a "math error" correction of \$3,000, which represents the FTB's disallowance of  
9 federal itemized deductions for gambling losses of \$3,000 that were reported on appellant's federal  
10 Schedule A (and which were carried over to appellant's California return when appellant used his  
11 federal AGI to calculate his California taxable income), and (ii) \$3,000, which represents the FTB's  
12 disallowance of additional California itemized deductions for gambling losses of \$3,000 that were  
13 reported on appellant's California Schedule CA, Part II.

14 At the hearing, appellant should be prepared to present evidence to show that he had  
15 gambling winnings from which he was entitled to deduct his gambling losses and to establish that the  
16 \$3,000 was properly claimed as a deduction on the Schedule CA.

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