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BOARD OF EQUALIZATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:) **HEARING SUMMARY**
) **PERSONAL INCOME TAX APPEAL**
RICHARD H. LEVIN AND LINDA D. LEVIN¹) Case No. 571155

	<u>Year</u>	<u>Accuracy-Related Penalty</u>
	2005	\$25,057.80
	2006	\$11,472.40
	2007	\$24,932.60

Representing the Parties:

For Appellants: Richard H. Levin²
For Franchise Tax Board: Christopher E. Haskins, Tax Counsel III

QUESTION: Whether appellants have demonstrated reasonable cause to abate the accuracy-related penalty pursuant to Revenue and Taxation Code (R&TC) section 19164.

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¹ Appellants reside in Los Angeles County.

² Appellants' appeal was submitted by Murray S. Hutchings, C.P.A., but their reply brief was submitted by appellant-husband.

1 HEARING SUMMARY

2 Background

3 Appellants were California residents during the 2005, 2006, and 2007 tax years at issue
4 and filed a California resident return for each year. (Resp. Op. Br., p. 1.) Appellants excluded a total of
5 \$3,096,227 in partnership income from their California returns. (Resp. Op. Br., p. 5.) Respondent
6 determined that this income was includible in appellants' California income because appellants were
7 California residents and therefore taxable on worldwide income in accordance with R&TC section
8 17041. Due to the substantial understatement of appellants' tax liability for each year, respondent
9 imposed the accuracy-related penalty. Appellants' claim for relief from the accuracy-related penalty
10 was denied at audit and protest. On appeal, appellants only dispute the imposition of the accuracy-
11 related penalty. (Resp. Op. Br., p. 1.)

12 Appellant-husband is an attorney with more than 30 years of experience in the practice of
13 law. During the periods at issue, appellant-husband was the majority partner in Levin & Stein,
14 Attorneys at Law (now known as Stein, Flanagan, Sudweeks & Houser) during the tax years at issue.
15 According to the website of Stein, Flanagan, Sudweeks & Houser, among other things, appellant-
16 husband earned his law degree from the University of California at Berkeley, has over 30 years of legal
17 experience, has been influential in shaping Washington State construction defect laws, authored
18 numerous articles on real estate law subjects, taught college-level classes in real estate law, and is
19 licensed to practice law in Washington and Oregon. (Resp. Op. Br., pp. 1-2; Ex. D.)

20 According to respondent's records, in a phone call to respondent's representative on
21 March 18, 2011, appellant's representative stated that the certified public accountant (CPA) hired by
22 appellants was licensed in 2004 and started preparing tax returns in 2005. Respondent asserts that
23 appellants intimated their CPA had little experience and was responsible for some errors. (Resp. Op.
24 Br., p. 4; App. Op. Br., Att.) Appellants, however, did not provide a declaration from their CPA
25 indicating she made a mistake. (Resp. Op. Br., p. 4.)

26 According to the Schedule K-1's attached to appellants' returns for the years at issue,
27 appellants received the following information regarding appellant-husband's ordinary income from his
28 law practice:

<u>Tax year</u>	<u>Federal Amount</u>	<u>California Adjustments</u>	<u>Total Income Using California Law</u>	<u>California Source Income</u>
2005	\$1,630,433	-\$1,314	\$1,629,119	\$372,860
2006	\$854,000	-\$906	\$853,094	\$853,094
2007	\$1,768,554	-\$3,127	\$1,765,427	\$542,261

(Resp. Op. Br., p. 4, Ex. G.)

In addition, appellants reported the following California adjustments on their Schedule CA (Form 540) – Column B Subtractions:

<u>Tax year</u>	<u>Federal Amount</u>	<u>CA(540) Subtraction</u>	<u>California Source</u>
2005	\$1,436,400	\$1,257,573	\$186,537
2006	\$657,028	\$617,708	\$48,825
2007	\$1,609,590	\$1,226,293	\$383,297

(Resp. Op. Br., p. 4; Exs. A, B, & C; App. Op. Br., Att.)

The following table demonstrates the relationship between appellants' reported taxable income and respondent's adjustments, as determined by respondent at audit, which reflect the unreported Schedule E partnership income:

<u>Tax year</u>	<u>California Taxable Income (as filed)</u>	<u>Add: Erroneous Sch. E Subtractions</u>	<u>Subtract: Allowable subtractions from Sch. K-1</u>	<u>Revised California Taxable Income</u>	<u>Understatement as a Percentage of California Taxable Income</u>
2005	\$579,866	\$1,257,573	\$(1,314)	\$1,836,125	68.5%
2006	\$295,634	\$617,708	\$(906)	\$912,436	67.7%
2007	\$867,688	\$1,226,293	\$(3,127)	\$2,090,854	58.7%

(App. Op. Br., Att.)

With the addition of appellant-husband's Schedule E partnership income, respondent assessed the following additional tax and imposed a 20 percent accuracy related penalty due to the substantial understatement of appellants' tax liability:

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<u>Tax year</u>	<u>Revised Taxable Income</u>	<u>Total Tax</u>	<u>Additional Tax</u>	<u>20% Accuracy-Related Penalty</u>
2005	\$1,845,670 ³	\$176,042	\$125,289	\$25,058
2006	\$912,436	\$80,599	\$57,362	\$11,472
2007	\$2,090,854	\$200,969	\$124,663	\$24,933

(Resp. Op. Br., pp. 5-6.)

According to appellants' Arizona and Oregon nonresident returns provided during the audit process, appellants reported the following income:

<u>Tax year</u>	<u>Arizona</u>	<u>Oregon</u>	<u>Total Other States</u>	<u>Total Excluded from California</u>
2005	\$121,761	\$132,289	\$254,050	\$1,257,573
2006	\$29,764		\$29,764	\$617,708
2007	\$0	\$665,774	\$665,774	\$1,226,293

(Resp. Op. Br., p. 6, Exs. E & F.)

Contentions

Appellants

Appellants contend that, although appellant-husband is a consummate attorney, he is not a "sophisticated" taxpayer. Appellants state that appellant-husband was not involved with the preparation of the partnership return and deferred all accounting and tax matters to his partner, Jerry Stein. Appellants further state that appellant-husband was responsible for the majority of the partnership's receipts and hired a California CPA to prepare his California tax return and the partnership's tax returns. Appellants argue that, although they may have received a copy of the partnership's tax return, they may not have seen the Schedule K-1. Appellants' former representative asserts that, based on his experience as a CPA for 30 years, none of his clients understood the impact of a Schedule K-1 on their return. Appellants argue that, although the 2006 Schedule K-1 was reported correctly, it does not demonstrate that appellants instructed the preparer to report a lesser amount on

³ Appeals Division staff is unable to reconcile this amount and the \$1,836,125 of revised California taxable income listed in the chart above (a difference of \$9,545). Respondent may wish to clarify appellant's revised taxable income for 2005.

1 appellants' personal return. Appellants further contend that the percentage of income backed out or
2 excluded (approximately 87 percent of their 2005 income, approximately 76 percent of their 2006
3 income, and approximately 72 percent of their 2007 income), would not alert an unsophisticated
4 taxpayer as the exclusion percentage for each year was similar. Appellants contend there is no evidence
5 to support the position that a sophisticated attorney would also be a sophisticated taxpayer. Appellants
6 state that they relied on their paid preparer to properly report appellant-husband's income. (App. Op.
7 Br., pp. 1-2.)

8 Appellants assert that the question is whether it is unreasonable for them to rely on the
9 CPA to accurately prepare their returns. Appellants contend that the issue is whether the error was so
10 blatant that appellants should have known of the error. Appellants assert that where a California
11 resident's income is attributed to sources outside the state, there is no basis for concluding that the
12 taxpayer should have known that the tax return was prepared incorrectly. Appellants question whether
13 an unsophisticated taxpayer would be aware of R&TC section 17041 and its provision which allows
14 California to impose a tax on the entire taxable income of a California resident. Appellants contend that
15 their retention of a CPA for the preparation of their tax returns clearly demonstrates that appellant-
16 husband did not believe he was competent to prepare his own returns and, for that reason, relied on his
17 CPA. Appellants assert that, as there is no evidence they withheld any relevant information from their
18 CPA or the return was inaccurate because it omitted out-of-state income, no penalty is warranted.
19 Appellants further contend that while the CPA had complete access to the partnership and appellants'
20 records, appellant-husband rarely met and spoke with the CPA as he relied on her expertise. Appellants
21 assert that, while there may have been a blatant error in the eyes of the Franchise Tax Board, it was not a
22 blatant error to appellant-husband. (App. Op. Br., pp. 2-3.)

23 In their reply brief, appellants explain that they relied on the advice of their CPA that
24 they were not required to pay tax to California on income earned in Washington since appellant-husband
25 was a part-time resident of Washington. Contrary to respondent's characterization of appellants' belief
26 that the CPA firm was not qualified, appellants explain that their CPA and her supervisor were licensed
27 by California to prepare California tax returns. Consequently, appellants contend they had no reason to
28 doubt their qualifications. (App. Reply Br., pp. 1-2.)

1 Appellants contend that whether there was a blatant error in the returns, that they should
2 have found, is not at issue here. Appellants assert the real issue is whether it was reasonable for
3 appellants to acquiesce to the CPA's decision to omit this income on their California returns. Appellants
4 note that appellant-husband has owned a single family residence in Seattle, Washington since 2004 and
5 began living in Seattle on a part-time basis on or about 1998. Appellant-husband has resided in Seattle
6 on a part-time basis since up to, and including, the present time. Appellants contend that, given these
7 facts, it was reasonable for him to rely on the CPA's conclusion that his part-time residence outside of
8 California and his receipt of income from a business outside of California justified the omission of his
9 Washington-based income on their California returns. Citing *United States v. Boyle* (1985) 469 U.S.
10 241, appellants contend that, where a taxpayer is not sophisticated, as here, they are entitled to rely on
11 the tax advice they received, even if the advice is erroneous. Appellants further note there is no
12 evidence that the advisor was not qualified and respondent conceded that appellants did not withhold
13 critical information from appellant-husband's tax advisor. Appellants further contend that the question
14 of whether a taxpayer's advisor is qualified should be determined based on the facts known to the
15 taxpayer when he relied on the advice, rather than what might have been apparent when the advisor's
16 competence is questioned by respondent several years later. (App. Reply Br., pp. 2-3.)

17 Appellants contend the issue boils down to whether the taxpayer was sophisticated in tax
18 matters and therefore should have realized the advice he received was erroneous. Appellants note that
19 respondent did not cite any authority to support its position that, because appellant-husband is a lawyer,
20 he is sophisticated in tax matters. Appellants contend that appellant-husband's practice never included
21 tax matters, and just because appellant-husband happens to be a lawyer does not mean he is
22 sophisticated in tax matters. Therefore, appellants contend there is no reason to conclude the advice
23 given was blatantly erroneous. (App. Reply Br., pp. 3-4.)

24 Respondent's Contentions

25 Respondent contends it properly assessed the 20 percent accuracy-related penalty for the
26 substantial understatement of income tax pursuant to Internal Revenue Code (IRC) section 6662.
27 Respondent notes that the amount of the understated tax for each of the tax years at issue clearly exceeds
28 both ten percent of the required tax and \$5,000, as shown in the following table:

<u>Tax year</u>	<u>Reported Tax Liability</u>	<u>Revised Tax Liability</u>	<u>Underpayment of Income Tax</u>	<u>Understatement Percentage</u>	<u>20% Penalty Amount</u>
2005	\$50,753	\$176,042	\$125,289	71%	\$25,027.80
2006	\$23,237	\$80,599	\$57,362	71%	\$11,472.40
2007	\$76,306	\$200,969	\$124,663	62%	\$24,932.60

(Resp. Op. Br., pp. 9-10.)

Respondent contends that appellants have not shown that the adequate disclosure and reasonable basis defense to the penalty applies. While appellants disclosed the amount excluded on their Schedule CA (Form 540), respondent argues appellants provided no relevant facts or reason with their returns for their deviation from the treatment required under R&TC section 17041 for the income of residents. In addition, respondent contends that appellants did not have a reasonable basis for their reported position, citing Treasury Regulation sections 1.6662-3(b)(3) and 1.6662-d(4)(3)(iii).

Respondent notes that in the case, *Van Camp & Bennion v. United States* (9th Cir. Wash. 2001) 251 F.3d 862, the Ninth Circuit indicated that, although the taxpayer's position had merit, the "reasonable basis" standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. Respondent further notes that the Ninth Circuit stated the taxpayer's position did not implicate an unsettled legal issue or question of first impression and therefore the taxpayer did not have a reasonably debatable position that justified the abatement of tax penalties. Accordingly, respondent contends there was no reasonable basis for appellants' treatment of their income. Respondent asserts that the language of R&TC section 17041 is simple and unambiguous and it is doubtful that any taxpayer could support a reasonable basis for excluding such a large percentage of their total income when they are California residents. Respondent asserts that, despite the partnership income clearly shown on the Schedule K-1's issued to appellants, appellants arbitrarily chose to exclude large amounts of partnership income they received in 2005, 2006, and 2007. (Resp. Op. Br., pp.10-11.)

Respondent also contends that the reasonable cause defense requires appellants to prove that the underpayment was due to reasonable cause and that they acted in good faith with respect to the underpayment, citing IRC section 6664(c) and Treasury Regulation sections 1.6664-1(b)(2) and 1.6664-4. Respondent further asserts that the following situations automatically preclude a finding of reasonable cause:

- 1 1. Where the taxpayer withholds critical information from the representative, which is relevant to
2 the correct determination. (*Prudhomme v. Commissioner*, T.C. Memo 2008-83.)
- 3 2. Where the taxpayer's representative was not qualified in the area of tax law. (*Janklow v.*
4 *Commissioner*, T.C. Memo 1988-46.)
- 5 3. Where there is a blatant error that the taxpayer should have found. (*Metra Chem Corp. v.*
6 *Commissioner*, (1987) T.C. Memo 88 T.C. 654.)
- 7 4. Where the taxpayer has sufficient knowledge to determine that a position taken on a return is
8 incorrect, and thus, it was not reasonable for the taxpayer to rely on the advice in good faith.
9 (*Nicole Rose Corp. v. Commissioner* (2nd Cir. 2002) 320 F.3d 282.)

10 (Resp. Op. Br., pp. 11-14.)

11 Respondent further contends that of these automatic exceptions, three apply to the present
12 appeal and preclude appellants from raising IRC section 6664 as a defense. Respondent contends that,
13 under the second exception (i.e., that appellants' representative on which appellants relied on was not
14 qualified in the area of tax law), respondent agrees with appellants' assertion that their CPA was not
15 qualified to prepare their returns. (Resp. Op. Br., pp. 11-14.)

16 With regard to the third automatic exception to the reasonable cause defense, respondent
17 contends that it is incredible that anyone reviewing appellants' returns would not call into question the
18 removal of 87 percent of their income for 2005, 76 percent of their income for 2006, and 72 percent of
19 their income for 2007. Respondent argues that such a reduction in income for the tax years in question
20 would raise the curiosity of even the simplest taxpayer. Respondent asserts that the obligation of
21 residents to pay income tax on all wealth received does not require a sophisticated, nuanced
22 understanding of an arcane area of income taxation. Respondent asserts that the instant appeal does not
23 necessitate taxpayer's familiarity with rules governing the complexities of pass-through income. Rather,
24 respondent contends at issue is the fundamental principle that applies to all resident taxpayers. (Resp.
25 Op. Br., pp. 12-13.)

26 Respondent further emphasizes that appellants are not simple taxpayers. Respondent
27 notes that appellant-husband was, or is, licensed in three states to practice law; he graduated from a
28 premier university; he opened successful law practices in at least three different states; and he

1 commanded the attention of many, including the Washington Legislature, the readers of the Wall Street
2 Journal and other lawyers in his field. Respondent asserts that appellants did not provide any evidence
3 demonstrating appellants did not review their returns. Respondent further asserts, if appellants reviewed
4 the returns, appellants would have spotted the “blatant error” that they claim is due to their CPA.
5 Respondent contends appellants have an obligation to review their tax returns before filing the returns
6 even if reliance on a competent tax advisor is established, citing *Prudhomme v. Commissioner, supra*,
7 *Caughlin v. Commissioner*, T.C. Memo 1994-113, and *Bailey v. Commissioner* (1954) 21 T.C. 678, 687.
8 Respondent argues that reliance on an advisor is not a defense to negligence where even a cursory
9 review of a taxpayer’s return would reveal an omission from income. (Resp. Op. Br., p. 13.)

10 Respondent also contends the fourth automatic exception applies to the instant appeal.
11 Respondent contends appellant-husband has sufficient knowledge to determine the position taken on the
12 return is incorrect and therefore it is unreasonable for appellants to rely on the advice. Respondent
13 asserts that, through appellant-husband’s experience in researching the law, working with state
14 legislators, advising his peers on real estate and housing association law and teaching contracts, real
15 estate and insurance law classes, appellant-husband had significant exposure to the tax laws of
16 California, Washington, and Oregon. Respondent contends that even an unsophisticated taxpayer is
17 capable of determining when taxes are due, citing *Baccei v. United States* (N.D. Cal. 2008) 2008 U.S.
18 Dist. LEXIS 50687. Accordingly, respondent contends that appellants had sufficient knowledge to
19 determine that a position taken on their return is incorrect and that it was unreasonable for appellants to
20 rely on such advice. (Resp. Op. Br., pp. 13-14.)

21 Respondent further contends appellants failed to show they had reasonable cause and that
22 they acted in good faith with respect to the underpayment of taxes. Respondent notes that appellants
23 state that appellant-husband was not involved in the tax matters of his practice and relied on his partner
24 Mr. Stein. Accordingly, respondent contends appellants apparently did not review the CPA’s work in
25 preparing their personal returns because, if they had reviewed the work, it would be clear to any
26 unsophisticated taxpayer that virtually three-quarters of the income from appellant-husband’s practice
27 had been excluded from their returns. Citing the Board’s decision in the *Appeal of James A. and Lisa E.*
28 *Alyn*, 2009-SBE-001, decided May 27, 2009, and *Ramirez v. Commissioner*, T.C. Memo 2007-347,

1 respondent contends that appellants' blind reliance on their CPA was not reasonable given the facts and
2 circumstances. (Resp. Op. Br., pp. 14-15.)

3 Applicable Law

4 Pursuant to R&TC section 17041, all income of a resident of California, regardless of
5 source, is subject to taxation by the State of California.

6 R&TC section 19164 provides for an accuracy-related penalty determined in accordance
7 with IRC section 6662. R&TC section 19164, which incorporates the provisions of IRC section 6662,
8 provides for an accuracy-related penalty of 20 percent of the applicable underpayment. The penalty
9 applies to the portion of the underpayment attributable to negligence or disregard of rules and
10 regulations or to any substantial understatement of income tax. (Int.Rev. Code, § 6662(b).)

11 The IRC defines "negligence" to include "any failure to make a reasonable attempt to
12 comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in
13 the preparation of a tax return." (Int.Rev. Code, § 6662(c); Treasury Reg., §1.6662-3(b)(1).) In
14 addition, negligence is strongly indicated where "a taxpayer fails to make a reasonable attempt to
15 ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a
16 reasonable and prudent person to be 'too good to be true' under the circumstances." (Treasury Reg.,
17 §1.6662-3(b)(1)(ii).) The term "disregard" is defined to include any "careless, reckless, or intentional
18 disregard." (*Ibid.*) There is a "substantial understatement of income tax" when the amount of the
19 understatement for a taxable year exceeds the greater of ten percent of the tax required to be shown on
20 the return, or \$5,000. (Int.Rev. Code, § 6662(d)(1).) "Understatement" means the excess of the amount
21 required to be shown on the return for the taxable year over the amount of the tax imposed which is
22 shown on the return, reduced by any rebate. (Int.Rev. Code, § 6662(d)(2).)

23 There are two exceptions to the imposition of the accuracy-related penalty. Under the
24 first exception, the penalty shall be reduced by the portion of the understatement attributable to either
25 (1) a tax treatment of any item if there is substantial authority for such treatment or (2) the relevant facts
26 affecting the item's tax treatment are adequately disclosed and there is a reasonable basis for the tax
27 treatment of such item. (Int.Rev. Code, § 6662(d)(2)(B).) "Reasonable basis" is a relatively high
28 standard of tax reporting and the reasonable basis standard is not satisfied by a return position that is

1 merely arguable or that is merely a colorable claim. (Treas. Reg., § 1.6662-3(b)(3).)

2 Under the second exception, the accuracy-related penalty will not be imposed to the
3 extent that an appellant shows the underpayment was due to reasonable cause and that he acted in good
4 faith with respect to the underpayment. (Int.Rev. Code, § 6664(c)(1); Treas. Regs. §§ 1.6664-1(b)(2) &
5 1.6664-4.) Reasonable cause means the exercise of ordinary business care and prudence. (*United States*
6 *v. Boyle, supra.*) Whether a taxpayer has acted in good faith is a factual determination made on a case
7 by case basis taking into account all the pertinent facts and circumstances. (Treas. Reg., § 1.6664-
8 1(b)(1).) Circumstances that may indicate reasonable cause and good faith include an honest
9 misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including
10 the experience, knowledge, and education of the taxpayer. (*Ibid.*) Reliance on professional advice,
11 however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was
12 reasonable and the taxpayer acted in good faith. (*Ibid.*) A taxpayer's education, sophistication and
13 business experience will be relevant in determining whether the taxpayer's reliance on tax advice was
14 reasonable and made in good faith. (Treas. Reg., § 1.6664-4(c)(1).)

15 In determining whether a particular taxpayer's reliance was reasonable and made in good
16 faith, an important factor will be the extent of the taxpayer's effort to assess his or her proper tax
17 liability under the law. (*Mauerman v. Commissioner* (10th Cir. 1994) 22 F.3d 1001.) In this regard, a
18 key factor in upholding or withdrawing the penalty rests on the sophistication of the taxpayer regarding
19 tax matters and whether this level of sophistication would have caused the taxpayer to realize a mistake
20 had been made upon a review of the return. (*Id.*)

21 In *United States v. Boyle, supra*, the United States Supreme Court held that when an
22 accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is
23 reasonable for the taxpayer to rely on that advice. However, even if a taxpayer establishes that a
24 competent tax adviser has been selected, the adviser was provided with the relevant information, and the
25 taxpayer relied on the adviser's professional judgment, the taxpayer remains responsible for reading and
26 reviewing the return to verify that all income items are included. (*Prudhomme v. Commissioner, supra*,
27 citing *Metra Chem Corp. v. Commissioner, supra.*)

28 Generally, respondent's imposition of an accuracy-related penalty is presumed correct.

1 (*Appeal of Robert and Bonnie Abney*, 82-SBE-104, June 29, 1982.) An appellant bears the burden of
2 proving error in respondent's determination that a penalty applies. (*Leuhsler v. Commissioner* (6th Cir.
3 1992) 963 F.2d 907, *affg.* T.C. Memo. 1991-179; *Neely v. Commissioner* (1985) T.C. 934, 947.) In
4 order to overcome the presumption of correctness of a penalty, an appellant must provide credible and
5 competent evidence to support its claim; otherwise, the penalty should not be abated. (*Appeal of*
6 *Winston R. Schwyhart*, 75-SBE-035, Apr. 22, 1975.)

7 STAFF COMMENTS

8 Although appellants were California residents and filed California resident returns for the
9 tax years at issue, appellants excluded the majority of their income from their California returns.
10 Appellants contend that reasonable cause exists for the abatement of the accuracy-related penalty
11 because they were unsophisticated in tax matters and relied on their CPA in good faith to accurately
12 report their income.

13 It appears to the Appeals Division staff that the key question is whether appellants, given
14 their knowledge and background, had reason to question the advice or results of the professional
15 employed to prepare the returns. If appellants had the requisite knowledge, then it raises doubts as to
16 whether they could reasonably rely on the advice in good faith. Treasury Regulation section 1.6664-
17 4(c)(1) notes that a taxpayer's education, sophistication and business experience is relevant in
18 determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith.
19 Appellants should be prepared to discuss how their reliance was reasonable and made in good faith
20 despite appellant-husband's extensive formal education, substantial business experience in successfully
21 operating at least three law offices, and his real estate law expertise.

22 Appellants may also wish to discuss why they believed that it was reasonable for them to
23 exclude the majority of their income from their California returns despite being California residents. It
24 appears to the Appeals Division staff that the obligation on California residents to pay income tax on all
25 wealth received is a simple tax principle which does not require a sophisticated, nuanced understanding
26 of an arcane area of income taxation. Appellants should be prepared to discuss the circumstances
27 surrounding the purported advice they received and provide documentation of such advice, if it exists.
28 Appellants assert, based on their CPA's advice, they believed that they were not required to pay tax to

1 California on income earned in Washington since appellant-husband was a part-time resident of
2 Washington. Appeals Division staff notes that appellants indicated appellant-husband lived in Seattle
3 part-time since 1998 and purchased a Seattle residence in 2004. Appellants may wish to address how
4 they previously reported their income earned in Washington prior to the years at issue.

5 Appeals Division staff also notes that appellants are responsible for reviewing their
6 returns to verify that all income items are included. (*Prudhomme v. Commissioner, supra.*) Appellants
7 should be prepared to discuss the extent of their review of the returns prior to filing them. Pursuant to
8 California Code of Regulations, title 18, section 5523.6, if either party has any additional evidence to
9 present, they should provide the evidence to Board Proceedings at least 14 days prior to the oral
10 hearing.⁴

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⁴ 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.