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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

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10 In the Matter of the Appeal of: ) **HEARING SUMMARY<sup>2</sup>**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **VALERIE NELSON<sup>1</sup>** ) Case No. 489125  
13 )

14 Year Amount<sup>3</sup>  
15 2003 \$1,618

16 Representing the Parties:

17  
18 For Appellant: Amber Bridges, TAAP<sup>4</sup>  
19 For Franchise Tax Board: Maria Brosterhous, Tax Counsel  
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22 <sup>1</sup> Appellant resides in Los Angeles, California.

23 <sup>2</sup> Appellant's appeal letter was received by Board Proceedings on May 7, 2009. The processing of this appeal was delayed, at  
24 appellant's request, from approximately July 2009 to May 20, 2010, so that appellant could obtain assistance from a  
25 representative at the Tax Appeals Assistance Program (TAAP) and the TAAP representative could get familiar with the facts  
of this appeal and obtain any applicable documents.

26 <sup>3</sup> The Notice of Action (NOA) included an additional tax of \$1,618.00, an accuracy-related penalty of \$312.80, and  
27 applicable interest. (Respondent has conceded that the accuracy related penalty does not apply, so it is no longer an issue in  
28 this appeal. In conceding this issue, respondent noted that the amount of tax is less than \$5,000. Therefore, there is no  
substantial underpayment of tax for purposes of the accuracy-related penalty. (See Rev. & Tax. Code § 19164, subdivision  
(a); Int.Rev. Code, § 6662, subd. (d).))

<sup>4</sup> Appellant was previously represented by the following individuals from TAAP: Kevin Chiao and Antreas Hindoyan.

1 QUESTION: Whether appellant has demonstrated error in the FTB's assessment, which was based  
2 upon federal adjustments.

3 HEARING SUMMARY

4 Background

5 Appellant filed a timely 2003 California income tax return, reporting federal and  
6 California adjusted gross income (AGI) amounts of \$64,575, California itemized deductions of \$24,421,  
7 and a California taxable income of \$40,154. After taking into account appellant's withholdings and  
8 credits, which totaled \$4,543, appellant reported an overpayment of \$4,140, which the FTB refunded.

9 Subsequently, the FTB learned that the Internal Revenue Service (IRS) adjusted  
10 appellant's 2003 federal income by \$19,770, which the FTB asserts is based on the following items: (i)  
11 Schedule C1-other expenses of \$6,140, (ii) one-half self-employment tax of \$-347, and (iii) other  
12 unreimbursed employee expenses of \$13,977. On July 26, 2007, the FTB issued a Notice of Proposed  
13 Assessment (NPA) that conformed to the federal adjustments by adding \$19,770 to appellant's 2003  
14 California taxable income. The NPA imposed an additional tax of \$1,968.00 and an accuracy-related  
15 penalty of \$312.80,<sup>5</sup> plus applicable interest.

16 Appellant timely protested the NPA by letter dated August 20, 2007, stating in part:

17 I have the proof for my expenses, which I claimed for this year. The Internal Revenue  
18 Service disallowed these expenses due to the fact that they felt that the proof was not  
organized. I would like to have an opportunity to present this documentation . . . .

19 However, respondent states "the record does not contain any substantiating document and it does not  
20 appear that she submitted any during the protest." (Resp. Open. Br., p. 2.). The FTB affirmed the NPA  
21 in an NOA dated April 24, 2009. This timely appeal followed.

22 Contentions

23 Appellant

24 Appellant makes four arguments. First, in her appeal letter, appellant states that "I have

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28 <sup>5</sup> As noted above, on appeal, the FTB agreed to remove the accuracy-related penalty.

1 provided you with all the receipts I have for the year of 2003.”<sup>6</sup> Second, in her reply brief, appellant  
2 asserts that she submitted a letter from her landlord who rented her a hair salon chair in 2003.<sup>7</sup> Third, in  
3 her reply brief, appellant asserts that she submitted a declaration signed under penalty of perjury, stating  
4 that she incurred the disputed expenses, “along with other business related expenses.” Included with her  
5 Reply Brief was a copy of a statement, in which appellant asserts that she paid rent to her landlord in  
6 2003.<sup>8</sup> Finally, in her reply brief, appellant explains that she did not challenge the IRS’s assessment  
7 because she was under the impression that challenging the IRS would lead to “further complications”  
8 and “dire consequences.”

#### 9 The FTB

10 The FTB states that its assessment correctly conforms to the federal adjustments. The  
11 FTB argues that appellant failed to provide evidence showing the IRS revised its adjustments or the IRS  
12 adjustments, and the California assessment based thereon, were made in error; thus, the FTB contends  
13 that appellant failed to carry her burden of proving error.

#### 14 Applicable Law

15 A taxpayer must concede the accuracy of the federal changes or prove that those changes,  
16 and any California deficiency assessment based thereon, are erroneous. (Rev. & Tax. Code, § 18622,  
17 subd. (a); *Appeal of Sheldon I. and Helen R. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Aaron and*  
18 *Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)<sup>9</sup> Unsupported assertions are not sufficient to satisfy a  
19 taxpayer’s burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

#### 20 STAFF COMMENTS

21 Appellant has referred several times to evidence that is not in the appeal record. Prior to  
22 the hearing, appellant should submit any evidence she has in support of her appeal, even if has been  
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25 <sup>6</sup> Staff notes that appellant did not provide any receipts (or other evidence) with her appeal letter. To the extent appellant has  
26 previously provided any receipts or other documents, or has any such documents, she should provide an additional copy as  
27 soon as possible to ensure that the record is complete (see Staff Comments below).

28 <sup>7</sup> This document is not in the record. Appellant should provide a copy prior to the hearing (see Staff Comments below).

<sup>8</sup> Staff notes that appellant’s statement is not signed under penalty of perjury, and it does not list the amount of rent she  
allegedly paid for the 2003 tax year.

<sup>9</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 previously submitted. As a June 11, 2009 letter from this Board's staff indicates:

2 . . . the Franchise Tax Board [FTB] and the Board of Equalization (BOE) [this Board] are  
3 separate and distinct agencies. Furthermore this appeal is an entirely new proceeding.  
4 Any information or other material that [appellant] has previously supplied to the  
5 Franchise Tax Board, or any information or other material that they may have supplied  
6 you, is not part of the record in this appeal.

7 Staff further requests that, if and to the extent it has not done so previously, respondent search the  
8 applicable protest records and provide any evidence previously provided so that all available  
9 information and documentation can be considered during the hearing. Pursuant to California Code of  
10 Regulations, title 18, section 5523.6, if the parties have any additional evidence to submit to the Board,  
11 the parties should provide their evidence to the Board Proceedings Division at least 14 days prior to the  
12 oral hearing. **Any evidence exhibits should be sent to: Claudia Madrigal, Appeals Analyst, Board  
13 Proceedings Division, State Board of Equalization, P.O. Box 942879, MIC: 81, Sacramento,  
14 California, 94279-0081.**

15 Staff notes that the FTB's use of information from the IRS has been held to be both  
16 reasonable and rational. (See *Appeal of Sheldon I. and Helen R. Brockett, supra*; *Appeal of Aaron and  
17 Eloise Magidow, supra*). Accordingly, appellant should be prepared to provide evidence demonstrating  
18 error in the IRS adjustments or the California assessment based thereon.

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