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

10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
11 ) **PERSONAL INCOME TAX APPEAL**  
12 **RICHARD PALMQUIST**<sup>1</sup> ) Case No. 526815  
13 )

	<u>Year</u>	<u>Proposed</u>
	2005	<u>Assessment</u> <sup>2</sup>
		\$7,467

16 Representing the Parties:  
17 For Appellant: Amber Bridges,<sup>3</sup> Tax Appeals Assistance Program (TAAP)  
18 Representative  
19 For Franchise Tax Board: Jaclyn N. Appleby, Tax Counsel

21 **QUESTION:** Whether appellant has established error in respondent's proposed assessment,  
22 which is based on a federal determination.

24 <sup>1</sup> Appellant resides in San Luis Obispo County, California. Although respondent issued the Notice of Proposed  
25 Assessment (NPA) in both appellant and his wife's names, only appellant signed the appeal letter. The Board Proceedings  
26 Division subsequently informed appellant that if his wife was appealing this matter, her signature is required. In response,  
27 appellant indicated that he was unable to obtain her signature and that he was willing to pursue the appeal in his own right.

27 <sup>2</sup> At the hearing, respondent should be prepared to provide the current amount of accrued interest.

28 <sup>3</sup> Appellant submitted his own appeal letter dated March 8, 2010. Amber Bridges, appellant's TAAP representative,  
submitted appellant's reply brief dated October 8, 2010. Appellant then submitted his own additional brief dated  
November 22, 2010.

1 HEARING SUMMARY

2 Background

3 Appellant filed a timely California Resident Income Tax Return (Form 540A) for the  
4 2005 tax year. On his return, appellant reported federal adjusted gross income (AGI) of \$7,777,  
5 California adjustments (subtractions) of \$13,501, a California AGI of zero and taxable income of zero.  
6 Appellant's return was accepted with no tax due. (Respondent's Opening Brief (Resp. Open. Br.),  
7 Exhibit (Ex.) A.)

8 Subsequently, respondent received information from the Internal Revenue Service  
9 (IRS) that indicated appellant's federal AGI had been adjusted to \$145,101. Appellant's federal  
10 account transcript, dated August 27, 2008, indicated that appellant's AGI had been adjusted to  
11 \$145,101 due to an amended return appellant filed on July 2, 2007. Based on the amended return, the  
12 IRS assessed additional tax of \$20,285. (Resp. Open. Br., Ex. C.)

13 Upon review, respondent determined that after accounting for the federal AGI  
14 adjustments, appellant's California taxable income totaled \$130,817. Accordingly, respondent issued  
15 a Notice of Proposed Assessment (NPA) on September 18, 2008, reflecting an additional tax liability  
16 of \$7,756, plus applicable interest. (Resp. Open. Br., Ex. D.)

17 Appellant protested the NPA, contending that the tax assessed by the IRS was  
18 erroneous and appellant was in the process of filing a dispute with the IRS to recover overpaid tax.  
19 (Resp. Open. Br., Ex. E.)

20 Respondent reviewed appellant's federal account on February 4, 2010, and discovered  
21 that the IRS made further adjustments to appellant's 2005 tax year account. The IRS reduced  
22 appellant's federal AGI from \$145,101 to \$141,995 based on an amended return appellant filed on  
23 October 20, 2008. In addition, a portion of the prior assessed tax in the amount of \$1,275 was abated.  
24 (Resp. Open. Br., Ex. F.)

25 In response to appellant's protest and based on the additional federal adjustments,  
26 respondent issued a Notice of Action (NOA) on March 5, 2010, reflecting these adjustments and  
27 reduced the additional tax liability to \$7,467, plus applicable interest. (Appellant's Appeal Letter  
28 (App. Appeal Ltr.), Attachment.) Appellant then filed this timely appeal.

1           Contentions

2                   Appellant

3           Appellant contends that respondent's proposed assessment is based on erroneous IRS  
4 information. He states that the IRS used "audit, appeal, mis-application of statute of limitations,  
5 trickery," refused to follow the instructions of the Taxpayer Advocate's Office, and forced appellant to  
6 pay tax appellant believes he does not owe. Appellant states that he operated a home business named  
7 Truth Radio and he was given conflicting information by the IRS as to which federal forms he was  
8 supposed to use for the business. He further states that he "re-studied the enabling document of Truth  
9 Radio" and discovered that it should have been treated as a pass-through entity. Appellant contends  
10 that the IRS refused to instruct appellant how to file a return for Truth Radio.

11           Appellant further contends that during the federal audit, the federal auditor went on a  
12 "fishing expedition" to wrongly assess \$165,000 in income for a year when the total amount received  
13 under a contract for sale of commercial real estate was only \$13,000. Appellant contends that Truth  
14 Radio's substantial losses should have been used to absorb the tax liability for the gain from the sale.  
15 Appellant states that "it appears (newly discovered) that Truth Radio is in fact a quasi-partnership for  
16 tax purposes, and it would be proper for Truth Radio to pass through profit and loss to the Palmquists  
17 by means of K-1 filings." Appellant also contends respondent's assessment, as detailed in the NOA  
18 dated March 5, 2010, was filed beyond the four year statute of limitations and therefore,  
19 unenforceable. Appellant claims the statute of limitations for the 2005 tax year closed on  
20 December 31, 2009. (Appeal Ltr., p. 1-2.)

21           Appellant states that he relied in good faith on an attorney and certified professional  
22 accountant (CPA) who "caused us to believe that this unjust assessment of Federal tax was ascribed to  
23 us by professionals, who – knowing the law and being aware of proper procedures – would at LEAST  
24 have filled out the correct papers for their client." He further states that "those papers were presented  
25 to us for final signature" during a very stressful period while his wife was recovering from open heart  
26 surgery. He requests any concerns about proper filing of the state return be addressed to his attorney  
27 or the employee of the attorney who prepared the return. (Appeal Ltr., p.2.)

28           In appellant's reply brief dated October 8, 2010, appellant concedes that respondent's

1 NPA was issued timely. However, appellant continues to assert that the federal assessment is  
2 incorrect. Appellant contends that the changes are incorrect because the IRS included income received  
3 in 2002, 2003, 2004 and 2005 on appellant's 2005 amended federal return. Appellant states that the  
4 income added to appellant's 2005 amended return was income appellant received from the installment  
5 sale of a land contract that is still ongoing and appellant still retains title to the property and pays all  
6 the property tax for the land. (Appellant's Reply Brief (App. Reply Br.), p.2-3.)

7 In addition, appellant states that the amended federal return includes income received  
8 by Truth Radio for the sale of a building in Delano, California. Appellant further states that in 1997,  
9 the IRS instructed appellant to file a Return of Partnership Income (Form 1065) for Truth Radio's tax  
10 return, which he did until he received a letter from the IRS in the early 2000's instructing Truth Radio  
11 to not file the Form 1065. Appellant states that the IRS did not inform appellant of any alternative  
12 forms he should have filed in place of the Form 1065. Appellant explains that through his own  
13 research, he discovered that he should have filed Truth Radio's income and expenses as a Schedule C  
14 attachment to his personal return. Appellant states that by the time appellant figured out the proper  
15 filing, it was too late to refile any returns prior to 2005. Therefore, appellant states he had to include  
16 income received in years prior to 2005 on his amended 2005 return. (App. Reply Br., p.3.)

17 Appellant states that his wife was in the hospital undergoing open heart surgery on  
18 May 3, 2007. During this time, the IRS demanded appellant pay a proposed additional federal tax  
19 liability of \$22,000. Appellant states that he endured many stressful and frustrating audit encounters  
20 with the federal auditors and he felt he had no choice but to pay the additional tax. Appellant states  
21 that he used a credit card cash advance check to pay the \$22,000 tax liability, but he maintains that the  
22 payment does not constitute an acknowledgement that the federal assessment is correct. Appellant  
23 asserts that it is an injustice to allow the IRS and respondent to group together income received in  
24 2002, 2003, 2004 and 2005 for his 2005 return while refusing to allow him to refile his returns for the  
25 2002, 2003 and 2004 tax years. Appellant included a letter dated May 3, 2007, from his attorney  
26 addressed to a federal auditor which indicates that appellant's attorney delayed in responding to the  
27 federal auditor and appellant's attorney requested additional time to respond because appellant's wife  
28 underwent surgery and appellant was an "emotional 'wreck'." (App. Reply Br., pp. 3-4, Attachment.)

1 In appellant’s additional brief dated November 22, 2010, appellant maintains that his  
2 “defense is offered in ‘the interest of justice’ in accord with the Maxim of Law that ‘No one is bound  
3 to do what is impossible.’” Appellant notes that he will soon be divorced and cites that one significant  
4 cause is the “harsh unlawful and fraudulent treatment” they received from the IRS. (App. Addl. Br., p.  
5 1.)

6 Respondent

7 On appeal, respondent notes the IRS made additional adjustments to the federal  
8 determination which reduced appellant’s California tax liability. Accordingly, respondent reduced the  
9 liability as shown on the NOA from \$7,467 to \$4,480, plus applicable interest. (Resp. Open. Br., p.2.)

10 Respondent contends that pursuant to Revenue and Taxation Code (R&TC) section  
11 18622, respondent’s determination based on the federal assessment is presumed correct, and appellant  
12 has the burden of proof to overcome that presumption. Respondent contends appellant has yet to submit  
13 any evidence or documentation to substantiate his claim that the federal adjustments are incorrect.

14 Specifically, respondent requests the following documentation:

- 15 1. Copies of all amended returns filed with the IRS for the 2005 tax year.
- 16 2. Copies of all correspondence between appellant and the IRS regarding the 2005 tax year,  
17 including any audit documents.
- 18 3. Truth Radio’s federal and state tax return for the 2005 tax year.
- 19 4. Evidence regarding the “quasi-partnership” status of Truth Radio.
- 20 5. Evidence to substantiate Truth Radio’s 2005 losses.
- 21 6. Any documentation or other evidence regarding IRS’s treatment of Truth Radio in 2005.

22 (Resp. Open. Br., p.3.)

23 With respect to appellant’s contention that the NPA was issued outside of the statute of  
24 limitations and is unenforceable, respondent contends that it sent the NPA timely under the general  
25 statute of limitations and the extended statute of limitations for federal assessments. Respondent  
26 contends that under the general four year statute of limitations, as appellant filed his 2005 return on

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1 March 10, 2006, respondent had until April 15, 2010 to timely mail the NPA.<sup>4</sup> As respondent sent the  
2 NPA to appellant on September 18, 2008, the mailing was timely. (Resp. Open. Br., p. 4.)

3 In response to appellant's contention that the FTB is relying on an unjust federal  
4 determination, respondent maintains that its determination, based on a final federal determination, is  
5 presumed correct. Respondent continues to assert that appellant failed to meet his burden of proof in  
6 establishing an error in the federal adjustment. Respondent contends appellant has not provided any  
7 documentation or any other substantiation to establish or refute the income received from the installment  
8 sale or the IRS's treatment of such income. Respondent notes that it may be possible that appellant  
9 previously reported installment sale income incorrectly and the IRS required him to claim all previously  
10 received income on his amended 2005 return, but without further information, respondent contends that  
11 it is unable to evaluate the federal adjustment for error based only on appellant's assertion. In response  
12 to appellant's contention that he was misinformed by the IRS as to the proper reporting for Truth Radio,  
13 respondent contends that appellant has not provided any documentation or other substantiation to  
14 establish or refute the income attributed to Truth Radio or the losses that appellant claims were incurred  
15 by the business. Respondent notes that while it requested appellant provide certain documents that  
16 would help respondent in determining whether the federal assessment contained any errors, appellant  
17 failed to do so. Accordingly, respondent contends that appellant has failed to rebut the presumption that  
18 its determination is correct. (Resp. Reply Br., pp. 1-2.)

### 19 Applicable Law

#### 20 Accuracy of Assessment

21 R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the  
22 accuracy of a federal determination or state wherein it is erroneous. R&TC section 18622, subdivision  
23 (b), also provides that when a taxpayer files an amended federal return, he is required to file a California  
24 amended return within six months of the amended federal return if the change in the return increases the  
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26 <sup>4</sup> R&TC section 19057 provides that respondent has four years to issue a deficiency if the taxpayer files a timely return. With respect to the  
27 extended statute of limitations applicable to federal assessments, pursuant to R&TC section 19060, subdivision (a), any taxpayer filing a  
28 federal amended return must also file an amended return with the FTB within six months. If the taxpayer fails to file an amended  
California return, respondent has an unlimited amount of time to propose a deficiency assessment. Respondent contends that as appellant  
did not file an amended California return following his filing of the federal amended returns dated July 2, 2007 and January 20, 2008,  
respondent had an open statute of limitations in which to assess the additional state tax based on federal changes. Accordingly,  
respondent's NPA was timely issued.

1 amount of the taxpayer's tax liability. While a taxpayer's claim that he only acquiesced in the federal  
2 adjustments because of coercion or economic reasons explains a taxpayer's motivation, it has no bearing  
3 on whether the federal determination was correct. (*Appeal of Robert J. and Evelyn Johnston, 75-SBE-*  
4 *030, Apr. 22, 1975; Appeal of Ronald J. and Eileen Bachrach, 80-SBE-011, Feb. 6, 1980; Appeal of*  
5 *Barbara P. Hutchinson, 82-SBE-121, June 29, 1982.*)<sup>5</sup>

#### 6 Burden of Proof

7 It is well-settled that a deficiency assessment based on a federal audit report is  
8 presumptively correct and the taxpayer bears the burden of proving the determination is erroneous.  
9 (*Appeal of Sheldon I. and Helen E. Brockett, 86-SBE-109, June 18, 1986; Todd v. McColgan (1949) 89*  
10 *Cal.App.2d 509.*) Unsupported assertions are not sufficient to satisfy appellant's burden of proof with  
11 respect to an assessment based on federal action. (*Appeal of Aaron and Eloise Magidow, 82-SBE-274,*  
12 *Nov. 17, 1982.*) In the absence of uncontradicted, credible, competent, and relevant evidence showing  
13 that respondent's determinations are incorrect, they must be upheld. (*Appeal of Oscar D. and Agatha E.*  
14 *Seltzer, 80-SBE-154, Nov. 18, 1980.*) Appellant's failure to produce evidence that is within his control  
15 gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Don A. Cookston,*  
16 *83-SBE-048, Jan. 3, 1983.*)

#### 17 STAFF COMMENTS

18 Staff notes respondent has adjusted the state deficiency to \$4,480 based on additional  
19 federal adjustments that it discovered after the issuance of the NOA. (Resp. Open. Br., p.2.) Staff also  
20 notes appellant filed amended federal returns on July 2, 2007 and October 20, 2008, but did not file any  
21 corresponding California amended returns. Thus, respondent relied on the federal adjustments, which  
22 are based on the information contained in appellant's amended federal returns, to calculate the proposed  
23 deficiency assessment. Despite appellant's assertion that the federal determination is unjust and  
24 appellant was coerced into paying the federal assessment, staff notes that prior decisions by this Board  
25 hold that a taxpayer's allegation of being coerced by the IRS is not relevant for purposes of determining  
26 whether the federal assessment was correct. (*Appeal of Robert J. and Evelyn Johnston, supra; Appeal of*  
27 \_\_\_\_\_

28 <sup>5</sup> Board of Equalization cases may be viewed on the Board's website ([www.boe.ca.gov](http://www.boe.ca.gov)).

1 *Ronald J. and Eileen Bachrach, supra; Appeal of Barbara P. Hutchinson, supra.*) At the oral hearing,  
2 appellant should be prepared to provide evidence showing error in the federal determination, including  
3 evidence of his claims that the income from his Truth Radio business should have been reduced by  
4 losses and that he previously reported installment sale income incorrectly for tax years 2002, 2003, 2004  
5 and 2005 and the IRS required him to report all previously received income on his amended 2005 return.  
6 Pursuant to California Code of Regulations, title 18, section 5523.6, if appellant has any additional  
7 evidence to present, appellant should provide his evidence to Board Proceedings at least 14 days prior to  
8 the oral hearing.<sup>6</sup>

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<sup>6</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.