

1 William J. Stafford
Tax Counsel
2 Board of Equalization, Appeals Division
450 N Street, MIC: 85
3 PO Box 942879
Sacramento CA 95814
4 Tel: (916) 323-3154
5 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**
) **PERSONAL INCOME TAX APPEAL**
)
) Case No. 519860

11
12 **AURELIO SERRANO AND**
13 **HAIDEE SERRANO¹**

14
15
16 Year
2005

Proposed
Additional Tax
\$11,958

18 Representing the Parties:

19
20 For Appellants: Aurelio and Haidee Serrano
21 For Franchise Tax Board: Joanne A. Garcia, Senior Legal Analyst
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23 QUESTION: Whether appellants have demonstrated error in the assessment.

24 HEARING SUMMARY

25 Background

26 Appellants filed a joint 2005 California income tax return, reporting among other things,
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28 ¹ Appellants reside in Riverside County, California.

1 federal adjusted gross income (AGI) of \$220,676, California adjustments (amounts subtracted from
2 appellants' federal adjusted gross income) of \$140,845 (of which \$140,329 was allegedly due to a
3 capital gain reported on appellants' federal return), California itemized deductions of \$37,514, and a
4 California taxable income of \$42,317, which resulted in a California tax liability of \$792. After
5 claiming withholdings of \$8,725, appellants requested a refund of \$7,933, which the Franchise Tax
6 Board (FTB or respondent) refunded on March 6, 2006.

7 Later, the FTB reviewed appellants' 2005 California return and determined that
8 appellants had not substantiated their capital gain adjustment of \$140,329. Accordingly, on
9 November 21, 2008, the FTB issued a Notice of Proposed Assessment (NPA) that added \$140,329 to
10 appellants' 2005 California taxable income, increasing appellants' taxable income from \$42,317 to
11 \$182,646 and resulting in a proposed additional tax of \$11,958, plus applicable interest.

12 Appellants timely protested the NPA. Subsequently, appellants submitted three amended
13 returns, of which only the third amended return is relevant to this appeal.² In their third amended return,
14 appellants reported, among other things, federal AGI of \$199,353, California adjustments (subtractions)
15 of \$1,160 (allegedly due to tax refunds, credits, and/or offsets of state and local income taxes),
16 California itemized deductions of \$50,128, and a California taxable income of \$148,065, resulting in
17 California a tax liability of \$9,534. (The third amended return did not include an adjustment for capital
18 gains.) After claiming withholdings of \$9,785, appellants requested a refund of \$251. Along with the
19 third amended return, appellants provided a letter, explaining that the FTB needed to give the Internal
20 Revenue Service (IRS) time to process appellants' amended return.

21 On November 4, 2009, the FTB mailed a letter to appellants, explaining that, according to
22 appellants' IRS transcript dated October 14, 2009, the IRS denied appellants' claim for refund on
23 October 12, 2009. As such, the FTB took the position that appellants had not substantiated that the NPA
24 was incorrect. Afterwards, on November 30, 2009, the FTB issued a Notice of Action (NOA), which
25 affirmed the NPA. This timely appeal followed.

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28 ² On appeal, appellants admit that their first and second amended returns contain errors.

1 Contentions

2 Appellants

3 Appellants assert that they overpaid their taxes for 2005. Specifically, appellants state
4 that they paid taxes of \$25,000 for the 2005 tax year.

5 The FTB

6 In its opening brief, the FTB provided a copy of appellants' IRS transcript dated April 12,
7 2010, showing, among other things, that appellants' federal AGI is listed as \$220,676. The FTB
8 contends that its NOA correctly conforms to appellants' IRS transcript. Also, the FTB asserts that
9 appellants have not shown they are entitled to any deductions, other than those allowed for in the NOA.
10 In short, the FTB states that appellants failed to provide evidence showing the IRS transcript and/or the
11 California NOA were issued in error. Thus, the FTB contends that appellants failed to carry their
12 burden of proving error in the NOA.

13 Applicable Law

14 Proposed Assessment

15 The FTB's use of income information from a taxpayer's IRS transcript to estimate the
16 taxpayer's taxable income is generally a reasonable and rational method of estimating taxable income.
17 (See *Appeals of Walter R. Bailey*, 92-SBE-001, Feb. 20, 1992; *Appeals of R. and Sonja J. Tonsberg*, 85-
18 SBE-034, Apr. 9, 1985.) Once the FTB has met its initial burden, the assessment is presumed correct
19 and a taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509;
20 *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) Unsupported assertions are not sufficient
21 to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17,
22 1982.) In the absence of uncontradicted, credible, competent, and relevant evidence showing error in
23 the FTB's determinations, they must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*,
24 80-SBE-154, Nov. 18, 1980.) A taxpayer's failure to produce evidence that is within his or her control
25 gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Don A.*
26 *Cookston*, 83-SBE-048, Jan. 3, 1983.)

27 Deductions

28 Income tax deductions are a matter of legislative grace, and a taxpayer who claims a

1 deduction has the burden of proving by competent evidence that he or she is entitled to that deduction.
2 (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Michael E. Myers, supra.*)

3 STAFF COMMENTS

4 At the oral hearing, appellants should be prepared to substantiate that the IRS transcript
5 and/or the California NOA are incorrect. As noted above, unsupported assertions are not sufficient to
6 carry appellants' burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*) In addition,
7 appellants should be prepared to substantiate their itemized deductions. Pursuant to California Code of
8 Regulations, title 18, section 5523.6, if appellants wish to provide additional evidence to the Board,
9 appellants should submit their additional evidence to the Board Proceedings Division at least 14 days
10 prior to the oral hearing in this matter.³

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³ 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.