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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 **LEVERN STAPLES<sup>1</sup>** ) Case No. 589098

|  | <u>Year</u> | <u>Proposed Assessment</u> |
|--|-------------|----------------------------|
|  | 2007        | \$497                      |

16 Representing the Parties:

17 For Appellant: Levern Staples  
18 For Franchise Tax Board: Dawn Casey, Staff Service Analyst

20 QUESTION: Whether appellant has established error in respondent's proposed assessment, which  
21 is based on information from the Internal Revenue Service.

22 HEARING SUMMARY

23 Background

24 Appellant filed a timely 2007 income tax return on which he reported federal adjusted  
25 gross income (AGI) of \$27,788 and claimed the standard deduction of \$3,516 for a taxable income of  
26 \$24,720 and tax of \$699. After accounting for an exemption credit of \$94, appellant reported a total tax  
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28 <sup>1</sup> Appellant filed his appeal in Los Angeles, Los Angeles County.

1 of \$605. After applying his withholding credit of \$1,028, appellant claimed an overpayment of \$423.  
2 (Resp. Op. Br., p. 1, Ex. A.)

3 During return processing, respondent Franchise Tax Board (respondent or FTB) corrected  
4 a math error and revised appellant's taxable income to \$24,272,<sup>2</sup> which reduced appellant's tax to \$580  
5 and increased appellant's overpayment from \$423 to \$542 (i.e., \$580 - \$94 - \$1,028). The \$542 revised  
6 overpayment was processed on May 27, 2008, and was sent to the Department of Child Support  
7 Services. According to respondent, it issued a Return Information Notice (RIN) that explained the  
8 mathematical correction made to appellant's return. (Resp. Op. Br., p. 1.)

9 Subsequently, respondent received information from the Internal Revenue Service (IRS)  
10 which showed that the federal AGI appellant reported on his California return was different than the  
11 amount reported to the IRS. Although appellant reported AGI of \$36,538 on his federal return, the  
12 federal AGI reported on appellant's California return was \$27,788, a difference of \$8,750. It appeared  
13 that appellant incorrectly transferred his federal taxable income amount onto his California return  
14 instead of the required federal AGI amount. Based on this information, respondent issued a Notice of  
15 Proposed Assessment (NPA) on February 25, 2011, to correct the federal AGI reported on appellant's  
16 California return, which increased appellant's taxable income by \$8,750 to \$33,022 (\$24,272 + \$8,750).  
17 This resulted in a proposed additional tax of \$497, plus applicable interest. (Resp. Op. Br., p. 2, Exs. A,  
18 B & C.)

19 Appellant protested the NPA, stating that he believes someone at the FTB is harassing  
20 him. Appellant stated that he suspects that this income tax dispute is due to a co-worker perusing  
21 appellant's medical records at the Veterans Affairs Hospital in West Los Angeles. Appellant further  
22 states that he believes there is an error because he filed the simplified federal income tax return (Form  
23 1040 EZ) every year, claiming one exemption, and over \$500 is taken out of his check each pay period.  
24 Appellant stated that he never kept a copy of his old returns because he always received a refund.  
25 (Resp. Op. Br., p. 2, Ex. D.)

26 In response, respondent sent appellant a letter dated June 16, 2011, explaining that  
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28 <sup>2</sup> Appellant's reported federal AGI of \$27,788, less the standard deduction of \$3,516, equals \$24,272.

1 appellant incorrectly transferred his federal taxable income instead of his federal AGI to appellant's  
2 California return. Appellant then responded in a letter dated July 10, 2011, stating that respondent has  
3 targeted him in an elaborate extortion scheme in light of the history of continued harassment from  
4 respondent's office. Appellant stated that he went to the FTB's office in Los Angeles to obtain a copy  
5 of his 2007 California return, and has yet to receive the return despite paying for it. Appellant stated  
6 that this is similar to what happened when he ordered a copy of his 2009 return and was told that he  
7 would have to track down the money order to determine what happened to the copy of the 2009 return.  
8 Appellant questioned respondent's ability to propose an assessment without showing appellant a copy of  
9 his return. Appellant further questioned the IRS Record of Account. Appellant also questions why,  
10 given how little money he makes, he is under such constant scrutiny from the FTB and the IRS and  
11 appellant believes that an investigation is needed. (Resp. Op. Br., p. 2, Exs. E & F.)

12           According to respondent, it sent appellant a copy of his 2007 return on July 19, 2011.  
13 Appellant then responded on July 29, 2011, acknowledging he erroneously entered the amount of federal  
14 taxable income instead of the federal AGI. However, appellant stated that once he made the correction,  
15 appellant was entitled to a refund for 2007. On August 22, 2011, respondent issued a Notice of Action,  
16 affirming the NPA. (Resp. Op. Br., p. 2, Ex. E and F.)

17           Appellant then filed this timely appeal.

### 18           Contentions

#### 19           Appellant

20           Appellant contends that he has been inundated with false claims that he owed money to  
21 the FTB for the past six years ever since he discovered a psychotic white supremacist extremist co-  
22 worker at the VA Hospital in West Los Angeles repeatedly breached his private medical records in 2003  
23 and 2004. Appellant states that, in 2005, because he failed to file a return for 2004, respondent claimed  
24 he owed \$576. Appellant explains that he did not file a return due to ignorance. Appellant states that, as  
25 he usually received a small refund, he saved California some time and money. Appellant states he filed  
26 his return and demonstrated that he did not owe \$576. Despite the fact that he was due a refund,  
27 appellant states that his wages were garnished. Appellant states that he had to go to respondent's office  
28 to resolve this issue after two years of harassment. Appellant states he then received a letter from

1 respondent indicating that he owed \$2,238 for the 2009 tax year and had to go through the same process  
2 of proving he did not owe the State of California any money. Appellant explains that he received yet  
3 another letter from respondent dated February 25, 2011, claiming that appellant owed \$576 for the 2007  
4 tax year. Appellant states that respondent explained the reason for the assessment is that an error he  
5 made on his 2007 return resulted in respondent's erroneous refund of \$540 issued to appellant, which  
6 was then transferred to a child support agency in Commerce, California. Appellant states that he  
7 thought respondent reviewed tax returns for accuracy and questions why appellant's return was  
8 reviewed again four years later. In addition, appellant states that he vaguely recalls receiving a letter  
9 from respondent in 2008 stating that his \$45 tax refund for the 2007 tax year was sent to a child support  
10 agency. Appellant states that he never received any correspondence stating that a \$540 refund was sent  
11 to the same agency. (Appeal Letter.)

12 Based on the above, appellant bases his appeal on four points: (1) it is difficult to believe  
13 that respondent would mistakenly send him a \$540 refund, when the corrected 2007 return sent to him  
14 by respondent indicates appellant should receive a \$423 refund; (2) appellant makes very little money  
15 and respondent's scrutiny over the past six years shows that appellant is being harassed; (3) appellant  
16 has been financially harassed since the breach of his private medical records; and (4) appellant already is  
17 paying an assessment for child support through his job. Appellant provided a copy of his earning  
18 statement for pay period August 27, 2011, indicating that \$183.87 was deducted for a "DEBT, GOV  
19 INV" and \$30 was deducted for "CHLD SUP, GRN" from his wages. (Appeal Letter, Attchmts 3 & 4.)

20 In response to respondent's contentions, appellant asserts that the issue of the proposed  
21 assessment cannot be determined without considering the history of scrutiny imposed on his California  
22 returns subsequent to the illegal breach of his private medical records by his co-worker. In support,  
23 appellant provided a copy of a Patient Access Report for the period January 1, 2003 to August 15, 2005.  
24 Appellant reiterates that, since 2005, respondent assessed taxes on appellant a total of three times for  
25 taxes appellant did not owe. Appellant asserts that, in August 2006, respondent garnished his wages for  
26 an alleged tax liability for 2003 of \$500. Appellant states that respondent was required to return those  
27 funds to appellant. In addition, respondent assessed a tax liability of \$1,243.93 for the 2009 tax year,  
28 which was subsequently determined to be erroneous. Appellant provided a copy of respondent's Final

1 Notice Before Levy for 2009 indicating that appellant had a tax liability of \$1,243.93 for 2009. In  
2 addition, appellant provided a letter from respondent dated March 18, 2011, indicating that a zero  
3 balance as a result of the following transactions: a debit for appellant's total tax liability of \$1,076.00, a  
4 debit for an agency intercept of \$40.33 to the Department of Child Support Services, a credit for tax  
5 withheld of \$1,115.00, and a credit for interest allowed of \$1.33. Appellant reiterates his belief that he  
6 was singled out for harassment by respondent after the 2003 breach of his medical records. (App. Reply  
7 Br., Exs. A, B & C.)

8 Respondent

9 Respondent contends that appellant incorrectly transferred the federal taxable income  
10 amount instead of the federal AGI amount to his California return and that the NPA properly corrects  
11 the AGI difference of \$8,750. Respondent notes that it verified appellant's federal AGI by reviewing a  
12 copy of appellant's federal account transcript. Respondent contends that when appellant filed his  
13 California return with the incorrect federal AGI, it resulted in an overpayment of \$542, instead of a \$45  
14 refund appellant should have received. Respondent contends that appellant received a refund which was  
15 \$497 more than the amount appellant was entitled to (\$542 - \$45). (Resp. Op. Br., p. 3.)

16 With respect to appellant's question of why respondent did not correct his federal AGI  
17 amount during return processing, respondent states that it only reviews returns for mathematical  
18 accuracy and completeness during the initial return processing. Respondent states that during the audit  
19 process, returns are later examined for, among other things, the correctness of the reported AGI,  
20 California adjustments, itemized deductions, other taxes and credits. (Resp. Op. Br., p. 3.)

21 Respondent notes that Revenue and Taxation Code (R&TC) section 19057 provides a  
22 general time limit of four years after the due date of the return for respondent to assess additional  
23 California income and franchise tax. Respondent states that the original due date for the 2007 return  
24 was April 15, 2008 and, therefore, the expiration date of the four-year statute of limitations expired on  
25 April 15, 2012. As a result, respondent contends that the NPA dated February 25, 2011, was issued well  
26 within the statutory period prescribed by law. Respondent further notes that its determinations are  
27 presumed correct and appellant bears the burden of proving that it is erroneous, citing *Todd v. McColgan*  
28 (1949) 89 Cal.App.2d 509. As such, respondent contends that the proposed additional tax of \$497, plus

1 interest, is correct. (Resp. Op. Br., pp. 3-4.)

2 Applicable Law

3 Burden of Proof

4 The FTB's determination is presumed correct and a taxpayer has the burden of proving  
5 it to be wrong. (*Todd v. McColgan, supra; Appeal of Michael E. Myers*, 2001-SBE-001, May 31,  
6 2001.)<sup>3</sup> In the absence of uncontradicted, credible, competent, and relevant evidence showing an  
7 error in the FTB's determinations, respondent's proposed assessment must be upheld. (*Appeal of*  
8 *Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) A taxpayer's failure to produce  
9 evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his  
10 case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

11 Statute of Limitations

12 R&TC section 19057 generally provides that respondent must issue a proposed  
13 assessment within four years of the date the taxpayer filed his or her California return.

14 Federal AGI

15 R&TC section 17072 requires a taxpayer to report the same federal AGI on both his  
16 federal and California returns.

17 STAFF COMMENTS

18 In accordance with R&TC section 19057, the statute of limitations for respondent to issue  
19 a proposed assessment for 2007 expired on April 15, 2012, four years after the April 15, 2008 due date  
20 of the return. Here, as respondent issued the NPA on February 25, 2011, respondent issued the NPA  
21 within the statute of limitations. Furthermore, it appears that appellant acknowledged that he  
22 misreported his federal taxable income amount, instead of his federal AGI amount, on his state return.  
23 Nevertheless, appellant appears to contend that the proposed assessment is incorrect because he is  
24 accustomed to receiving refunds and contends respondent is harassing him. Respondent should be  
25 prepared to discuss the circumstances of the \$542 refund sent to the Department of Child Services. In  
26 addition, respondent should be prepared to discuss what notice, if any, it provided to appellant regarding  
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28 <sup>3</sup> Board of Equalization cases may be found on the Board's website: [www.boe.ca.gov](http://www.boe.ca.gov).

1 the refund sent to the Department of Child Services.

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