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

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11) **PERSONAL INCOME TAX APPEAL**
12 **SHIN P. YANG AND CONNIE L. DENG¹**) Case No. 589501

<u>Year</u>	<u>Proposed Assessment³</u>
2004	\$4,067

16 Representing the Parties:

17 For Appellants: Shin P. Yang and Connie L. Deng
18 For Franchise Tax Board: Marguerite E. Mosnier, Tax Counsel III

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

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25 ¹ Appellants reside in Pasadena, Los Angeles County.

26 ² Appellants were originally scheduled for an oral hearing at the July 24, 2012 Board meeting. However, due to appellants'
27 request for additional time to prepare for the hearing, this matter was postponed and rescheduled for an oral hearing at the
28 October 23, 2012 Board meeting.

³ Although respondent initially imposed an accuracy-related penalty on its Notice of Action, respondent abated the penalty after further review.

1 HEARING SUMMARY

2 Background

3 Appellants filed a timely 2004 joint income tax return on which they reported state wages
4 of \$37,056, federal adjusted gross income (AGI) of \$45,243, itemized deductions of \$31,021, taxable
5 income of \$14,222, and tax of \$161. After accounting for personal exemption credits of \$170,
6 dependent exemption credit of \$265, and withholding credit of \$131, appellants claimed an overpayment
7 of \$131. Respondent Franchise Tax Board (respondent or FTB) accepted appellants' return as filed and
8 issued a refund of \$131 to appellants on May 16, 2005. (Resp. Op. Br., pp. 1-2, Exs. A, B & C.)

9 On March 14, 2007, respondent received information from the Internal Revenue Service
10 (IRS) which indicated that adjustments were made to appellants' federal account after an IRS audit.
11 Specifically, the IRS disallowed the claimed Schedule C business expenses, increased the Schedule C
12 business income, and increased the self-employment tax credit. (Resp. Op. Br., p. 2, Ex. D.)
13 Respondent made corresponding adjustments to appellants' California tax account to the extent
14 applicable under California law. Respondent proposed to increase appellants' Schedule C gross receipts
15 (\$114,057), to disallow Schedule C business expenses (\$112,532), and to allow a credit for one-half of
16 the self-employment tax (\$7,996). As a result, respondent issued a Notice of Proposed Assessment
17 (NPA) on September 11, 2008, stating the proposed adjustments and proposing an additional tax
18 assessment of \$17,265, plus interest. The NPA also proposed an accuracy-related penalty of \$3,453.
19 (Resp. Op. Br., p.2; Appeal Ltr., Attachment.)

20 Appellant-husband protested the NPA, indicating his real income, derived from personal
21 injury related claims, was approximately 33 to 40 percent of total deposits and was less than the revised
22 taxable income of \$232,815, as listed on the NPA. Appellant-husband specifically disputed \$195,560 of
23 the total taxable income of \$232,815. (Resp. Op. Br., p. 2, Ex. E.)

24 After review, on January 15, 2009, respondent sent a letter to appellants to notify them of
25 respondent's decision to postpone action because respondent received information from the IRS
26 indicating that the federal action was not final. Respondent requested that appellants advise the FTB
27 when the federal action became final. On February 23, 2009, respondent again requested appellants to
28 advise the FTB of the status of the federal action. According to respondent's records, appellants did not

1 respond to respondent's request. (Resp. Op. Br., p. 2, Exs. F & G.)

2 Respondent issued another letter, dated July 6, 2011, to appellants requesting that
3 appellants forward documentation of the revised federal adjustments. Subsequently, respondent
4 received information from the IRS indicating that the IRS revised appellants' federal AGI from
5 \$263,892 to \$121,990, a reduction of \$141,902 (i.e., $\$263,892 - \$141,902 = \$121,990$). Appellants'
6 federal account transcript reflected a revised AGI of \$121,990 and an abatement of a portion of the
7 previously-assessed additional tax. Based on this information, respondent revised the NPA and issued a
8 Notice of Action (NOA) dated August 19, 2011. The NOA reflected the same adjustments in the NPA,
9 but also included the \$141,902 reduction in federal AGI, which only increased appellants' taxable
10 income by \$76,691 (i.e., $\$114,057 + \$112,532 - \$7,996 - \$141,902$) to taxable income of \$90,913 (i.e.,
11 \$14,222 (appellants' originally-reported taxable income) + \$76,691 (increase in taxable income)). The
12 NOA proposed additional tax of \$4,067.00, an accuracy-related penalty of \$813.40, plus interest.⁴
13 (Resp. Op. Br., pp. 2-3, Exs. H & I; Appeal Ltr., Attachment.)

14 Appellants then filed this timely appeal.

15 Contentions

16 Appellants

17 Appellants dispute the total taxable income of \$76,791⁵ reflected on the NOA.
18 Appellants contend that their "real income" derived from personal injury claims was much less than the
19 assessed amount. Appellants assert that this amount may be "33.3% to 40%" of total deposits, the Form
20 1099 amount, or the proceeds as explained in a letter by his Certified Public Accountant (CPA) dated
21 April 7, 2008.⁶ Appellants dispute \$49,536 of the taxable income amount, conceding taxable income of

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25 ⁴ Pursuant to Revenue and Taxation Code section 19116, according to respondent, interest was suspended from March 14,
2008 to September 26, 2008. In addition, as noted previously, the accuracy-related penalty was later abated by respondent.

26 ⁵ Although this is the amount stated in appellants' letter, the NOA reflects a revised taxable income of \$90,913. Appellants
27 should be prepared to discuss the discrepancy in light of the disputed amount of taxable income. The amount mentioned in
appellants' letter appears to be the \$76,691 increase in appellants' taxable income.

28 ⁶ Although appellants mention this letter in their appeal, they did not submit this letter with their appeal.

1 \$27,255.⁷ (Appeal Ltr., pp. 1-2.)

2 Respondent

3 Respondent contends that a state deficiency assessment based on a federal determination
4 is presumptively correct and appellants bear the burden of demonstrating error in its proposed
5 assessment based on a federal determination. As appellants allegedly failed to provide any evidence
6 proving error, respondent contends that appellants have not met their burden of proof. Respondent notes
7 that appellants have not explained the meaning of what they described as “real income,” and “total
8 deposits,” nor have they explained how a “correct” calculation of taxable income would be based on
9 33.3 percent to 40 percent of “real income.” As such, respondent contends that appellants failed to
10 establish error in either the IRS’s or respondent’s calculation of appellants’ taxable income, citing the
11 *Appeal of Der Weinerschnitzel International, Inc.*, 79-SBE-064, decided by the Board on April 10,
12 1979.⁸ Respondent provided appellants with a pro forma return reflecting the adjustments made by the
13 IRS which explains respondent’s calculation of the proposed assessment. In addition, respondent
14 reviewed a current federal account transcript for the year at issue which did not show any pending
15 review or subsequent adjustment by the IRS. Respondent contends that the information available to
16 respondent indicates that the federal determination is final and appellants have not submitted any
17 documentation demonstrating the contrary. Respondent requests that the Board sustain its proposed
18 assessment of additional tax of \$4,067, plus interest. (Resp. Op. Br., pp. 3-4, Exs. J, K & I.)

19 Applicable Law

20 Revenue and Taxation Code section 18622, subdivision (a), provides that a taxpayer
21 shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is
22 well-settled that a deficiency assessment based on a federal audit report is presumptively correct and
23 the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I.*
24 *and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)

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27 ⁷ As mentioned above, respondent asserts that appellants’ taxable income totals \$90,913. Based upon appellants’ statement,
28 in which they concede taxable income of \$27,255, appellants appear to dispute taxable income of \$63,658 (i.e., \$90,913 - \$27,255).

⁸ Board of Equalization cases may be found at the Board’s website: www.boe.ca.gov.

1 Unsupported assertions are not sufficient to satisfy an appellant's burden of proof with respect to an
2 assessment based on federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17,
3 1982.) In the absence of uncontradicted, credible, competent, and relevant evidence showing that
4 respondent's determinations are incorrect, such proposed assessments must be upheld. (*Appeal of*
5 *Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) An appellant's failure to produce
6 evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his
7 case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

8 STAFF COMMENTS

9 Appellants contend that the total taxable income reflected in the NOA is incorrect.
10 Appellants contend that their "real" income is 33.3 to 40 percent of their total deposits. Appellants may
11 wish to explain, and provide evidence of, this calculation. Appellants should be prepared to provide the
12 April 7, 2008 letter written by their CPA and discuss how it demonstrates error in the proposed
13 assessment. In addition, appellants may wish to provide any information which they provided to the IRS
14 for consideration with their federal audit. Pursuant to California Code of Regulations, title 18, section
15 5523.6, if appellants have any additional evidence to present, they should provide such evidence to the
16 Board Proceedings Division at least 14 days prior to the oral hearing.⁹

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28 ⁹ 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.