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8 **BOARD OF EQUALIZATION**
9 **STATE OF CALIFORNIA**

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11 In the Matter of the Appeal of:) **HEARING SUMMARY**
12) **PERSONAL INCOME TAX APPEAL**
13 **ALFRED J. AND**) Case No. 435082
14 **MARIA S. ALVAREZ¹**)
15 _____)

	<u>Year</u>	<u>Claim For Refund</u>
	2001	\$11,936

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19 Representing the Parties:

20 For Appellant: Peter S. Griffith, Certified Public Accountant (CPA)
21 For Franchise Tax Board: Diane L. Ewing, Tax Counsel III
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23 QUESTION: Whether appellants have demonstrated that they are entitled to the claimed refund.

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28 ¹ Appellants reside in Orange County.

1 HEARING SUMMARY

2 Background

3 Appellants filed a timely 2001 California state income tax return with the status of
4 married filing jointly (MFJ). On that return appellants reported an adjusted gross income (AGI) of
5 \$459,221, and deductions of \$20,238, for a taxable income of \$438,983. Appellants self-assessed tax of
6 \$37,130, which was decreased by withholding of \$18,902 and estimated tax payments of \$14,000. The
7 resulting tax liability was \$4,228, which appellants submitted to respondent with their 2001 return.

8 On April 15, 2005, appellants filed an amended 2001 return indicating it reflected federal
9 adjustments to income. The change in income was reported based on purported adjustments to
10 appellants' 1998 and 1999 federal returns that impacted the cost basis and passive activity suspended
11 losses of Schedule E properties. On the amended return appellants reported an AGI of \$339,806, and
12 deductions of \$27,402, for a taxable income of \$312,404. Appellants self-assessed tax of \$25,194,
13 which was decreased by the amount of tax already paid for 2001, \$37,130. The result is appellants
14 claim they made an overpayment of tax in the amount of \$11,936 for 2001.

15 After receiving appellants' amended return, respondent sent a letter to appellants
16 informing them that it accepted the amended return as a protective claim for refund. Additionally,
17 respondent requested that appellants send a copy of the final federal determinations for all tax years
18 under audit. Respondent subsequently received information (appellants' Individual Master File or IMF)
19 from the Internal Revenue Service (IRS) that it had denied appellants' 2001 federal refund claim.
20 Respondent again requested that appellants provide the final federal determinations for all tax years
21 under audit. Appellants did not provide the requested information and therefore respondent denied
22 appellants' 2001 refund claim. Appellants filed this timely appeal on December 21, 2007.²

23 Contentions

24 Appellants contend that they are not aware that a final federal determination for the 1998
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26 ² Appellants requested at the outset of their appeal and throughout the briefing process that the appeal be deferred until the
27 IRS Taxpayer Advocate completed a review of their return. The Board Proceedings Division (as well as the Franchise Tax
28 Board) asked appellants to provide documentation indicating that the IRS was reviewing any tax years affecting appellants'
2001 tax year; appellants have not been able to do so. At the last deadline to request a subsequent deferral appellants failed
to request a further deferral. The appeal was accordingly activated and scheduled for oral hearing.

1 and 1999 tax years has been issued and therefore they cannot provide those documents to respondent.
2 Appellants also contend that they are currently appealing a judgment from the IRS and are working with
3 a tax advocate in Los Angeles, California on that appeal. Appellants state that they will contact
4 respondent when a disposition on the federal appeal is issued. Respondent contends that appellants have
5 not provided sufficient evidence of overpayment.

6 Applicable Law

7 On a claim for refund based on an alleged overpayment, the taxpayer bears the burden of
8 proving that respondent's determination of his tax liability is erroneous and the correct amount of tax the
9 taxpayer believes he owes. This is a double burden of proof. (*Appeal of Omer W. Ross Deceased*, 86-
10 SBE-120, June 10, 1986; *Appeal of Edward Durley*, 82-SBE-154, July 26, 1982; *Griffin v. United States*
11 (5th Cir. 1979) 588 F.2d 521). A taxpayer's unsupported assertions are not sufficient to satisfy his or
12 her burden of proof; further, an appellant's failure to produce evidence that is within his or her control
13 gives rise to a presumption that such evidence is unfavorable to their appeal. (*Appeal of James C. and*
14 *Monablanché A. Walshe*, 75-SBE-073, Oct. 20, 1975; *Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3,
15 1983.)

16 STAFF COMMENTS

17 Appellants bear the burden of proof to show they correctly claimed an overpayment of
18 tax on their 2001 return, purportedly based on federal changes. Staff notes that, to date, appellants have
19 not provided evidence of a federal change to their 2001 federal return; on the contrary, the IMF shows
20 only that the IRS denied appellant's 2001 claim for refund. At the hearing, appellants should be
21 prepared to provide final federal determinations for all relevant tax years under audit, if available. If
22 there is not a final federal determination for a particular tax year under audit, appellants should provide
23 evidence as to what issues are being addressed in the federal audit and how those issues might impact
24 appellants' 2001 state income tax return. If appellants are unable to provide evidence that there is a final
25 federal determination with issues relevant to their 2001 state income tax return, or that they are
26 otherwise entitled to the claimed refund, then respondent's denial of the refund claim should be
27 sustained.

28 Respondent should be prepared to discuss whether or not it has information showing that

1 the IRS has come to a final determination. Specifically, respondent should be prepared to discuss
2 appellant's IMF transcript.

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