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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 **GEORGE DADANIAN AND**) Case No. 263345
13 **BARBARA DADANIAN¹**)

	<u>Years²</u>	<u>Proposed Assessments³</u>
	1983	\$5,902.71
	1984	\$6,197.00

18 Representing the Parties:

19 For Appellants: Jesus J. Mejia, CPA
20 For Franchise Tax Board: Diane L. Ewing, Tax Counsel III

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23 ¹ Appellants reside in Whittier, Los Angeles County, California. This matter was pulled from the October 2, 2007, Board
24 Hearing calendar at appellants' request. This matter was then scheduled for the February 28, 2008 Board hearing calendar,
25 but deferred until November 24, 2008, pending an Offer in Compromise with the Internal Revenue Service. The Board did
not receive a request to continue the deferral; therefore, the hearing was reinstated.

26 ² The years involved are old because appellants owned an interest in a partnership that was audited over several years' time
27 by the Internal Revenue Service (IRS). The IRS made changes in appellants' income in a report dated December of 1999,
and sent that report to respondent within six months of its final determination. Respondent issued proposed assessments in
28 2000, which were protested and then deferred; in 2004 the proposed assessments were affirmed.

³ The Franchise Tax Board should be prepared to provide the interest calculations at the hearing.

1 QUESTION: Whether the proposed assessments, which are based on federal adjustments, are
2 barred by the statute of limitations.

3 HEARING SUMMARY

4 Background

5 The Internal Revenue Service (IRS) audited the Kirwan Technology partnership and
6 made adjustments to individual returns of the partners, including appellants. The IRS increased
7 appellants' 1983 taxable income by \$53,661 and their 1984 taxable income by \$56,332. Appellants did
8 not report the federal adjustments to respondent Franchise Tax Board (FTB). The IRS sent the FTB the
9 adjustments, dated December 6, 1999. The FTB received the federal adjustments on February 11, 2000.

10 The FTB mailed Notices of Proposed Assessment (NPA's) for both 1983 and 1984, on
11 November 13, 2000. The NPA's were based on identical adjustments to the federal returns. Appellants
12 protested both NPA's. Subsequently, appellants asserted that they filed an Offer in Compromise (OIC)
13 with the IRS. The FTB made various requests for a copy of the OIC but did not receive it timely.
14 Therefore, on April 6, 2004, the FTB issued Notices of Action (NOA) affirming the NPA's. Appellants
15 filed this appeal. Because the facts and circumstances of this appeal are similar to those in the case of
16 *Ordlock v. Franchise Tax Board* (2006) 28 Cal.4th 897, the Board deferred proceedings in this case
17 pending a final decision in *Ordlock*.

18 Contentions

19 On appeal, appellants contend that the NPA's are barred by the statute of limitations.
20 The FTB argues that the proposed assessments, which are based on federal adjustments, are not barred
21 by the statute of limitations.

22 Applicable Law

23 Revenue and Taxation Code (R&TC) section 18622 provides that a taxpayer must report
24 to the FTB any changes made by the IRS to the taxpayer's gross income, deductions, or tax within six
25 months after the final federal determination. (Rev. & Tax. Code, § 18622, subd. (a).) If a taxpayer does
26 report federal changes within six months of a final federal determination, respondent may, within two
27 years of such report, issue a notice of proposed deficiency assessment. (Rev. & Tax. Code, § 19059.)
28 However, if a taxpayer does not report a federal change by the IRS as required by R&TC section 18622,

1 a notice of proposed deficiency may be mailed to the taxpayer *at any time*. (Rev. & Tax. Code,
2 § 19060.)

3 R&TC section 19057 states that, except in the case of a false or fraudulent return and
4 *except as otherwise provided*, a deficiency assessment shall be mailed to the taxpayer within four years
5 after the return was filed. In the present case, appellants failed to report final federal determinations that
6 increased their federal tax liability and consequently increased their state tax liability. On these facts, it
7 appears that R&TC sections 18622 and 19060 provide the relevant “otherwise provided,” statute of
8 limitations, and the four-year limitations period provided by R&TC section 19057 does not apply.
9 (*Ordlock v. Franchise Tax Bd. supra.*)

10 The FTB’s determinations that are based on federal audits are presumed correct, and
11 appellants bear the burden of proving error. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109,
12 June 18, 1986.) In the absence of uncontradicted, credible, competent, and relevant evidence showing
13 error in the FTB’s determinations, they must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-
14 SBE-154, Nov. 18, 1980.) The failure to produce evidence that is within appellants’ control gives rise to
15 a presumption that such evidence is unfavorable to their case. (*Appeal of Don A. Cookston*, 83-SBE-
16 048, Jan. 3, 1983.) The taxpayer shall concede the accuracy of a federal determination or state wherein
17 it is erroneous. (Rev. & Tax. Code, § 18622, subd. (a).) A taxpayer’s unsupported assertions are not
18 sufficient to satisfy his or her burden of proof. (*Appeal of James C. and Monablanche A. Walshe*, 75-
19 SBE-073, Oct. 20, 1975.)

20 STAFF COMMENTS

21 With the decision in *Ordlock*, it does not appear that appellants’ statute of limitations
22 argument is viable. The FTB has received a copy of the federal OIC, dated July 31, 2002, which
23 indicates it is an offer based on doubt as to liability. Appellants will want to submit what, if any, IRS
24 action was taken on that OIC. Appellants also filed another federal OIC that delayed this hearing; if
25 appellants have any relevant information on the recent OIC, such as whether the IRS accepted it and on
26 what basis, they should provide it. Staff notes that appellants indicate in their February 13, 2008 letter
27 to the Board that this offer was based on “effective tax administration.” This type of offer is submitted
28 where there is no doubt that the tax is correct and there is potential to collect the full amount of tax

1 owed, but an exceptional circumstance exists (such as providing full time care for a dependant child
2 with a serious long term illness). The parties should be prepared to address the relevance of this offer, if
3 accepted, to the correctness of the amount of the final federal determinations.

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