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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

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 10 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
 11 ) **PERSONAL INCOME TAX APPEAL**  
 12 **ELIAS ERAZO AND GRISELDA ERAZO**<sup>1</sup> ) Case No. 441320  
 13 )

	<u>Year</u>	<u>Proposed Assessment</u> <sup>2</sup> <u>Tax</u>	<u>Penalty</u> <sup>3</sup>
	2003	\$12,594.00	\$2,518.80

17 Representing the Parties:

18 For Appellants: John Reynard, TAAP<sup>4</sup>  
 19 For Franchise Tax Board: Diane L. Ewing, Tax Counsel III  
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21 **QUESTIONS:** (1) Whether appellants have shown error in respondent's proposed assessment.  
 22 (2) Whether this Board has jurisdiction to determine if the assessment was discharged  
 23 in bankruptcy.

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 27 <sup>1</sup> Appellants reside in Kansas City, Kansas.  
 28 <sup>2</sup> Respondent should be prepared to provide the amount of interest accrued as of the date of the hearing.  
<sup>3</sup> Respondent has agreed to abate the \$2,518.80 accuracy-related penalty. (Resp. Reply Br., p. 1.)  
<sup>4</sup> Appellants supplied their own opening brief, but are now represented by the Tax Appeals Assistance Program (TAAP).

1 HEARING SUMMARY

2 Background

3 On March 1, 2006, the Franchise Tax Board (FTB or respondent) received a notice from  
4 the Internal Revenue Service (IRS) that there had been changes made to appellants' federal taxable  
5 income for 2003. (Resp. Reply Br., p. 1.) The notice, in the form of a FedStar IRS Data Sheet (RAR),  
6 was dated August 11, 2005. (Resp. Reply Br., exhibit A.) The RAR disallowed Schedule C expenses in  
7 the amount of \$162,017 for cost of goods sold and \$21,000 for mortgage interest. As a result, \$1,694 of  
8 miscellaneous expenses on Schedule A were disallowed, there was a \$13,274 increase to self-  
9 employment tax (SE), and a \$6,637 increase to the SE adjusted gross income (AGI). (*Id.*) The result of  
10 the adjustments made in the RAR was an increase in federal taxable income by \$178,074. The IRS  
11 assessed a \$55,620 federal tax deficiency and a \$11,124 accuracy related penalty. (*Id.*)

12 Respondent indicates that appellants did not report the changes made by the RAR. (Resp.  
13 Reply Br., p. 1.) According to the adjustments made by the RAR, respondent adjusted appellants' state  
14 taxable income by \$178,074 and issued a Notice of Proposed Assessment (NPA) on September 21,  
15 2007. (Resp. Reply Br., exhibit B.) Based on the adjustments, the NPA proposed \$12,594.00 in  
16 additional tax, a \$2,518.80 accuracy related penalty, and interest.<sup>5</sup> (*Id.*) Appellants timely protested the  
17 NPA, stating that the federal determination was still under investigation. (Resp. Reply Br., p. 2 &  
18 exhibit C.) Respondent requested evidence that the federal determination was not yet final by letter on  
19 January 15, 2008, and by telephone on January 22, 2008. (Resp. Reply Br., p. 2 & exhibit D.)  
20 Respondent indicates that it did not receive any further information from appellants and affirmed the  
21 NPA by issuing a Notice of Action (NOA) on February 15, 2008. (Resp. Reply Br., p. 2; App. Op. Br.,  
22 exhibits.) This timely appeal followed.

23 Contentions

24 Appellants assert that there is error in respondent's proposed assessment. Appellants  
25 argue that they did not make the money that the adjustments show. Appellants contend that any  
26 amounts due from the 2003 tax year were discharged in bankruptcy. (App. Op. Br.)

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<sup>5</sup> Subsequently, respondent indicated that it will abate the penalty. (Resp. Reply Br., p. 1.)

1 Respondent contends that it based the proposed assessment on information supplied by  
2 the IRS, and that appellants have not shown error in the federal determination. (Resp. Reply Br., p. 2.)  
3 Respondent provided a copy of the individual master file transcript (IMF) from the IRS dated May 12,  
4 2008, showing that the federal assessment was final on November 21, 2005, and was not adjusted.<sup>6</sup>  
5 (Resp. Reply Br., exhibit E.) Respondent contends that the tax obligation was not discharged in  
6 bankruptcy, and, regardless, the Board does not have jurisdiction to determine whether it was discharged  
7 in bankruptcy.<sup>7</sup> (Resp. Add'l. Br., p. 4.)

### 8 Applicable Law

#### 9 Federal Determination

10 A federal determination is deemed final on the date on which the adjustment resulting  
11 from an IRS examination is assessed. (Rev. & Tax. Code, § 18622, subd. (d); Int.Rev. Code, § 6203.)  
12 Recording the liability in accordance with federal rules and regulations constitutes an assessment.  
13 (Treas. Reg., § 301.6203-1.) IMF transcripts meet the federal requirements for properly recording a  
14 liability.

15 R&TC section 18622 provides that a taxpayer shall either concede the accuracy of a  
16 federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment  
17 based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving  
18 that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18,  
19 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to  
20 satisfy appellant's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17,  
21 1982.) In the absence of uncontradicted, credible, competent, and relevant evidence showing error in  
22 respondent's determinations, they must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-  
23 154, Nov. 18, 1980.)

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25 <sup>6</sup> Respondent notes that the deficiency assessment in the IMF is \$4,083 less than the deficiency assessment on the RAR.  
26 Respondent states that this is due to a refundable child tax credit (\$910) and an earned income credit allowed (\$3,173).  
27 Respondent asserts that these differences do not affect the adjustments to appellants' taxable income, which are the basis of  
the proposed assessment. (Resp. Reply Br., p. 3, fn. 2.)

28 <sup>7</sup> Respondent provided a printout of appellants' bankruptcy record, showing a filing date of July 9, 2004, and a discharge date  
of October 14, 2004. (Resp. Reply Br., exhibit F.)

1                   Bankruptcy

2                   A tax liability cannot be discharged until the assessment has become final, after  
3 appellants have exhausted all administrative appeals. (*In Re King* (9<sup>th</sup> Cir. 1992) 961 F.2d 1423; *Schatz*  
4 *v. Franchise Tax Board* (1999) 69 Cal.App.4<sup>th</sup> 595.) It appears that the assessment in this appeal has not  
5 become final, because the Board has not issued its decision, and therefore the tax liability could not have  
6 been discharged in bankruptcy. Moreover, the Board is without jurisdiction to determine if a bankruptcy  
7 discharge applies to taxes which respondent proposes to assess. (*Appeal of Robert G. and Jean C.*  
8 *Smith*, 81-SBE-145, Oct. 27, 1981.)

9                   STAFF COMMENTS

10                   Appellants should be prepared to discuss and provide evidence supporting their claims  
11 that the assessment is incorrect and that it was discharged in bankruptcy.

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