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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 **WAYNE J. POLLARD**<sup>1</sup> ) Case No. 399801

<u>Year</u>	<u>Proposed Assessment</u> <sup>2</sup>
2004	\$1,190

17 Representing the Parties:

18 For Appellant: Wayne J. Pollard  
19 For Franchise Tax Board: Joanne A. Garcia, Senior Legal Analyst

21 **QUESTION:** Whether the interest/dividend income earned from Loomis Municipal Income  
22 Fund-A is exempt from California income tax.

23 **HEARING SUMMARY**

24 Background

25 Appellant filed a timely California income tax return, reporting federal adjusted gross  
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27 <sup>1</sup> Appellant resides in Los Angeles County.

28 <sup>2</sup> Respondent will provide a calculation of the amount of interest that has accrued as of the date of the oral hearing.

1 income (AGI) of \$186,051, less California adjustments of \$19,070, and less itemized deductions of  
2 \$6,522, resulting in taxable income of \$160,459. Appellant reported a total tax of \$12,947, which was  
3 reduced to tax due of \$3,827 after application of \$9,120 of withholding. (Resp. Reply Br., exhibit A.)  
4 Appellant paid the tax due when he filed his return. (Resp. Reply Br., p. 1.)

5 After reviewing the return, respondent determined that appellant underreported the  
6 amount of interest/dividend received from a mutual fund. Respondent issued a Notice of Proposed  
7 Assessment (NPA) on December 12, 2006, against appellant that increased his taxable income by  
8 \$12,082.95 to \$173,261.95. The NPA proposed additional tax of \$1,190. (Resp. Reply Br., exhibit B  
9 and also attached to appeal letter.) Appellant sent a letter to respondent stating that FTB withdrew the  
10 prior assessments for 2002 and 2003 because FTB had incorrect information. (App. Opening Br.,  
11 attachment.) Appellant requested that FTB withdraw the proposed assessment for 2004 on the same  
12 basis. Subsequently, appellant protested the NPA. In his protest, appellant asserted that the 1099-DIV  
13 he received which reported dividend income of \$124.28 was correct and he reported his dividend  
14 income correctly.<sup>3</sup> (App. Opening Br., attachment.)

15 On March 19, 2007, respondent issued a Notice of Action (NOA) affirming the NPA in  
16 its entirety. The NOA explained that the NPA was affirmed because appellant failed to furnish  
17 additional information to show error in the NPA. (App. Opening Br., attachment.) Appellant filed this  
18 timely appeal.

19 Respondent also sent a letter to appellant on March 30, 2007, explaining that appellant's  
20 letter of February 26, 2007 to Senator Jack Scott was received by FTB after the NOA was issued.  
21 (Resp. Opening Br., exhibit C.) FTB explained that they received information from the fund that  
22 appellant earned \$12,802.95 in interest/dividend income. FTB also stated that where a fund invests at  
23 least 50 percent in federal, California state or local obligations, the percentage of income that is derived  
24 from the California municipal bonds is tax free. However, if the mutual fund invests more than 50  
25 percent in non-California municipal bonds, then all of the interest/dividend income is taxable in  
26 California. FTB stated that the Loomis Municipal Income Fund-A invested only eight (8) percent in  
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28 <sup>3</sup> Appellant also sent a letter to Senator Jack Scott regarding the proposed liability and issues in this appeal.

1 California municipal bonds. FTB explained that the 1099-DIV does not include interest/dividend  
2 income information from municipal bonds that are exempt for federal purposes. (*Ibid.*)

3 Contentions

4 Appellant contends that he properly reported and paid the correct amount of tax due in  
5 2004. Appellant provided a copy of the 1099-DIV for 2004 that shows Loomis Municipal Income  
6 Fund-A paid him \$124.28 in 2004. Appellant argues that respondent has based its proposed assessment  
7 on incorrect information. Appellant asserts that respondent received its information from National  
8 Financial, but that National Financial bears no relationship with IXIS/Advisor Funds (IXIS), which  
9 owns Loomis Municipal Income Fund-A. Appellant provided a letter from IXIS, which he contends  
10 shows that the 1099-DIV of \$124.28, is correct. Appellant maintains that FTB withdrew proposed  
11 assessments for 2002 and 2003 after appellant provided a letter from IXIS stating that the 1099-DIV for  
12 2002 and 2003 were correct and that the instant assessment should also be withdrawn.

13 Respondent contends that California law provides interest/dividend income from a tax-  
14 exempt bond fund is tax-exempt for California purposes if at least 50 percent of the total value of the  
15 bond fund assets consists of obligations exempt from taxation in California. (Citing Rev. & Tax. Code,  
16 § 17145.) If a fund fails to meet the 50 percent threshold, respondent asserts none of the income is tax-  
17 exempt in California. FTB requires financial institutions to report payments of interest/dividend income  
18 earned on mutual funds that invest primarily in non-California municipal bonds under Revenue and  
19 Taxation Code (R&TC), section 18639. Respondent states that it received information from Loomis  
20 Municipal Income Fund-A that appellant earned \$12,802.95 in interest/dividend income during 2004.  
21 Respondent argues that none of the income is exempt in California because the fund invests only eight  
22 percent of its assets in California.

23 Respondent contends that, contrary to appellant's contention, the supplemental  
24 information provided does not show error in its proposed assessment. Specifically, respondent argues  
25 that the letter from IXIS and the 1099-DIV (showing \$124.28 of taxable interest/dividend income in  
26 2004) does not show error in the proposed assessment because the 1099-DIV (a federal form) does not  
27 include any income information for income that is tax-exempt for federal purposes. Thus, respondent  
28 asserts, income that may be subject to state tax (but is not subject to federal tax) would not be shown on

1 the federal documents presented by appellant.

2 Respondent states that it conducted an internet search for Loomis Municipal Income  
3 Fund-A and was directed to the website for CDC Nvest Funds, the company that issued appellant's  
4 1099-DIV. Respondent notes that the CDC Nvest Funds website contains a copy of the statement that  
5 appellant would have received with his 2004 1099-DIV and that this statement directed appellant to  
6 refer to his year-end statement for the *total* amount of income he earned in 2004. Respondent requested  
7 that appellant provide his year-end statement, but appellant did not do so. Respondent obtained and  
8 provided a copy of the statement entitled "Tax Information Notice" from the CDC Nvest Funds website.  
9 (Resp. Supp. Br., exhibit D.) Respondent notes that the statement has two separate sections, "Important  
10 Notice to California Residents" and "Attention Shareholders with California Addresses," which inform  
11 shareholders who are either California residents or have California addresses that the fund is required to  
12 report to the FTB any dividends earned by their account holders on federally tax-exempt non-California  
13 bonds held by the fund. The statement also specifies that in California, eight percent of the Loomis  
14 Sayles Municipal Income Fund income is tax exempt. Respondent contends that appellant should have  
15 received this statement from CDC Nvest Funds and should have been aware of the reporting differences  
16 between the IRS and FTB. In addition, respondent notes that appellant informed it in a telephone  
17 conversation that he is a registered investor. Respondent asserts that as a registered investor, appellant  
18 should have been aware of the state and federal differences in reporting federal tax-exempt dividends.  
19 Thus, respondent contends that its determination is correct.

20 With respect to the withdrawal of FTB's proposed assessments for 2002 and 2003,  
21 respondent contends that, after further review, it may have withdrawn the assessments in error.  
22 Respondent further contends that, regardless, each taxable year stands on its own, and must be examined  
23 separately. (Citing *Burnet v. Sanford & Brooks Co.* (1931) 282 U.S. 359, 365-366; *Commissioner of*  
24 *Internal Revenue v. Sunnen* (1948) 333 U.S. 591, 598.)

25 Law

26 In resolving an issue on appeal, respondent's determination is presumed correct and  
27 appellant has the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509;  
28 *Appeal of Richard Byrd*, 84-SBE-167, Dec. 13, 1984.) Unsupported statements are insufficient to carry

1 this burden of proof. (*Appeal of Ismael R. Manriquez*, 79-SBE-077, Apr. 10, 1979.)

2 California allows the exemption of interest and dividends derived from exempt state,  
3 local, or U. S. government obligations pursuant to R&TC, section 17145. The exempt status of  
4 dividends derived from such obligations is allowed to pass through to the individual shareholder of a  
5 mutual fund. (*Brown v. Franchise Tax Board*, 197 Cal.App.3d 300 (1987).)

6 R&TC section 17145 (“Exempt-interest dividends to shareholders of management  
7 company”) provides as follows in subdivision (a): “A management company, or series thereof, is  
8 qualified to pay exempt-interest dividends to its shareholders if, at the close of each quarter of its taxable  
9 year, at least 50 percent of the value of its total assets consists of obligations which, when held by  
10 an individual, the interest therefrom is exempt from taxation by this state.”

11 R&TC section 17145, subdivision (b)(1), defines exempt-interest dividends as: "any  
12 dividend or part thereof paid by a management company or series thereof in an amount not exceeding  
13 the interest received by it during its taxable year on obligations that, when held by an individual, interest  
14 therefrom is exempt from taxation by this state... " To claim the exemption, the shareholder must have  
15 received a written notice from the issuing company, designating the dividends as exempt. (Rev. & Tax.  
16 Code, § 17145, subd. (b)(1).)

17 STAFF COMMENTS

18 At the hearing both parties should be prepared to discuss whether the interest dividends  
19 received by appellant meet the criteria set forth in R&TC section 17145. Appellant should consider  
20 presenting evidence that he received written notice from the management company designating the  
21 amounts he received as exempt-interest dividends. As of this writing, respondent has presented  
22 information from the CDC Nvest Fund website showing that in 2004 only eight percent of the Loomis  
23 Sayles Municipal Income Fund income was from tax exempt California municipal bonds. Appellant has  
24 provided the Form 1099-DIV. Both parties should consider discussing what information is provided to a  
25 taxpayer by the federal Form 1099-DIV. It appears to staff that Form 1099-DIV is not intended to show  
26 income that, though not subject to federal tax, is subject to state tax.

27 Both parties should be prepared to address whether respondent’s withdrawal of the NPAs  
28 for 2002 and 2003 is relevant to this appeal. The Board previously held that “we should decide cases

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such as the one before us wholly on their own merits, without regard to any determination by the Franchise Tax Board, express or implied, with respect to years other than those before us in the particular case.” (*Appeal of Allied Properties*, 64-SBE-026, March 17, 1964.)

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