STATE BOARD OF EQUALIZATION
CORPORATION FRANCHISE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Appeal of:	Case No. 606172
UNIFIED PRECIOUS METALS, INC.	Oral hearing date: February 24, 2015 Decision rendered: September 24, 2015 Publication due by: January 22, 2016

Representing the Parties:

For Appellant: Geoffrey A. Weg, Valensi Rose PLC
For Franchise Tax Board: Marguerite Mosnier, Tax Counsel IV

Counsel for the Board of Equalization: Louis A. Ambrose, Tax Counsel IV

LEGAL ISSUE

Whether appellant has shown that respondent's proposed assessment was barred by the statute of limitations.

FINDINGS OF FACT

Appellant is a California subchapter S corporation engaged in the business of buying and selling currency and collectibles. Alan Van Vliet and Kathryn Van Vliet, husband and wife, each own a 50-percent interest in appellant. Mr. Van Vliet is appellant's president and chief executive officer. Appellant filed a timely federal tax return for tax year 2000 and reported a flow-through loss from Elysion Limited (Elysion). Appellant also filed a timely California return for tax year 2000 reflecting the loss.

The Internal Revenue Service (IRS) subsequently determined that appellant was involved in a listed transaction as described in Notice 2007-57 (Loss Importation Transaction) during tax year 2000. A federal audit report dated October 7, 2009, disallowed the claimed loss from Elysion and made other adjustments, which increased appellant's net taxable income by $23,219,652. On February 8, 2010, the

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Van Vliets agreed to an assessment of additional tax based on the adjustments, and the IRS concluded the audits of appellant and the Van Vliets on April 26, 2010. Appellant's Business Master File and the Van Vliets' Individual Master File indicate the examinations were closed on April 26, 2010.

Appellant did not notify respondent of the federal adjustments and did not file an amended California return reflecting the federal adjustments. Respondent was first notified of the federal changes when it received a copy of the Federal Revenue Agent's Report (RAR) on December 29, 2010. Following an audit, respondent issued a Notice of Proposed Assessment (NPA) dated May 24, 2012, which proposed additional tax and penalties. Appellant filed a timely protest arguing that the statute of limitations barred the assessment of additional tax. On October 11, 2012, respondent issued a Notice of Action affirming the NPA, from which appellant filed this timely appeal.

APPLICABLE LAW

Revenue and Taxation Code (R&TC) section 19057, subdivision (a) generally provides that every NPA shall be mailed to the taxpayer within four years after the return was filed. R&TC sections 19059 and 19060 provide exceptions to the general limitations period for proposed deficiency assessments based on federal changes or corrections. The applicability of these alternative limitations periods depends upon when or whether the federal change or correction is reported to respondent.

R&TC section 18622, subdivision (a) provides, in pertinent part, that: "[i]f any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the [IRS], . . . that taxpayer shall report each change or correction, . . . within six months after the date of each final federal determination of the change or correction or renegotiation." R&TC section 18622, subdivision (d) provides that "the date of each final federal determination shall be the date on which each adjustment or resolution resulting from an [IRS] examination is assessed pursuant to Section 6203 of the [Internal Revenue Code (IRC)]." IRC section 6203 provides that "[t]he assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary."

If a taxpayer or the IRS reports federal changes or corrections to respondent after the six-month period from the date of the final federal determination, R&TC section 19060, subdivision (b) provides, in pertinent part, that respondent may issue an NPA to the taxpayer within four years from the date that

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respondent is notified.

ANALYSIS

Pursuant to R&TC section 18622, subdivision (a), appellant was required to report the increase to the income reported on the tax year 2000 return determined by the IRS because that increase constituted a "change or correction" within the meaning of that provision. As noted above, appellant did not do so. The IRS account transcript records the correction to the tax year 2000 return as an adjustment to "net taxable income" of $23,219,652 and, in an entry describing the action as "Additional tax assessed by examination," with a date of April 26, 2010. The entry reflects federal adjustments shown on a Form 4605-A titled "Examination Changes – Partnerships, Fiduciaries, S Corporations and Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed)" that resulted in "[c]orrected ordinary, distributable net, or taxable income" in the amount of $23,219,652. Thus, the April 26, 2010 date of the entry noted on the IRS account transcript is the date on which the federal adjustment was assessed within the meaning of IRC section 6203 and, therefore, was the date of the final federal determination for purposes of R&TC section 18622. Because respondent was notified of the final federal determination on December 29, 2010, more than six months after April 26, 2010, the four-year limitations period pursuant to R&TC section 19060, subdivision (b) was applicable, and the NPA issued on May 24, 2012 was timely.

DISPOSITION

For the foregoing reasons, respondent's action is sustained.

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ORDER

Pursuant to the analysis of law and facts above, the Board ordered that the action of the FTB for the year at issue be sustained. Adopted at Culver City, California, on this __day of November, 2015.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member[†]

[†]For Betty T. Yee, pursuant to Government Code section 7.9.

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