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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 **GAYLE BARRETT AND**) Case No. 538085
13 **DOUGLAS BARRETT**)

<u>Year</u>	<u>Proposed Tax Assessments¹</u>
2003	\$830
2004	\$2,262
2005	\$3,010

18 Representing the Parties:

20 For Appellants: Gayle Barrett
21 For Franchise Tax Board: Cynthia D. Kent, Tax Counsel

23 QUESTION: Have appellants demonstrated any error in the federal adjustments or any error in the
24 assessments proposed by the Franchise Tax Board (FTB or respondent)?

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27 ¹ The Franchise Tax Board has determined that the proposed penalties should be abated for each of the appeal years, so that
28 matter is not in dispute. The Notices of Action included the following accuracy-related penalties: \$157.20 for 2003, \$452.40 for 2004, and 602.00 for 2005.

1 HEARING SUMMARY

2 Background

3 Appellants filed their California income tax returns in a timely manner and received
4 refunds for each year: 2003, 2004, and 2005. Subsequently, the Internal Revenue Service (IRS) audited
5 appellants' federal returns for these years and made adjustments for these years. Appellants did not
6 notify the FTB of these federal adjustments. The FTB learned of the federal adjustments through
7 Revenue Agent Reports (RAR). The FTB issued a Notice of Proposed Assessment (NPA) for each tax
8 year, based on the federal adjustments. The FTB adjusted appellants' taxable income from \$11,850 to
9 \$46,368 for 2003, from \$19,272 to \$69,994 for 2004, and from \$15,261 to \$80,451 for 2005.

10 For 2003, the NPA increased appellants' Schedule C income by \$39,348, decreased the
11 self-employment tax deduction by \$1,174, decreased itemized deductions by \$3,656, and disallowed \$44
12 for the Child and Dependent Care Expenses Credit, resulting in an additional tax of \$830.

13 For 2004, the NPA included the following adjustments:

14	One-half Self Employment Tax:	(\$ 3,586)
15	Schedule C1 Advertising	\$20,684
16	Schedule C1 Cost of Goods Sold	\$14,300
17	Schedule C1 Gross Receipts or Sales	\$12,832
18	Schedule C2 Gross Receipts or Sales	\$ 5,402
19	Schedule D Short term Gain/Loss	\$ 40
20	Schedule A Medical and Dental Expenses	\$ 1,050
21	Additional tax	\$ 2,262

22 For 2005, the NPA included the following adjustments:

23	One-half Self Employment Tax:	(\$ 4,813)
24	Schedule C1 Advertising	\$20,138
25	Schedule C1 Cost of Goods Sold	\$17,228
26	Schedule C1 Gross Receipts or Sales	\$29,711
27	Schedule C2 Gross Receipts or Sales	\$ 1,050
28	Schedule A Medical and Dental Expenses	\$ 1,876

1 Additional tax

\$ 3,010

2 Appellants protested the proposed assessments, saying that the IRS was reviewing their
3 account and had not finished its research. Appellants submitted two letters from the IRS: neither letter
4 discussed the federal adjustments, but both specified a timeframe for the IRS to reply to letters from
5 appellants. After the expiration of the timeframes specified in the IRS letters, the FTB responded to
6 appellants and requested documentation from the IRS showing that the adjustments had been revised.
7 When appellants did not reply, the FTB issued a Notice of Action (NOA) for each year, affirming the
8 proposed assessments, and this timely appeal followed.

9 Contentions

10 Appellants contend that the IRS adjustments are not final. They state, “there is no way of
11 knowing if [the FTB] adjustment to our taxes is correct until we have reached an agreement with the
12 IRS.” (App. Rep. Br.) In support of their position, appellants submitted a letter from the IRS dated June
13 18, 2010, acknowledging the receipt of appellants’ request for a Collection Due Process Hearing.

14 Respondent contends that appellants have not shown any error in the proposed
15 assessments. Respondent asserts the federal audit process is final. Respondent also contends that the
16 Collection Due Process Hearing pertains to the IRS collection activities, but it does not relate to the
17 underlying tax deficiencies. In support of its position, respondent submitted copies of appellants’
18 federal transcripts, which do not appear to indicate any claims or appeals pending. For 2003, the FTB
19 asserts the federal transcript shows that appellants agreed to the federal assessment.

20 Applicable Law

21 Section 18622 of the Revenue and Taxation Code (R&TC) requires the taxpayer to
22 concede the accuracy of the federal determination or indicate where it is erroneous. A deficiency
23 assessment based on a federal audit report is presumptively correct and the taxpayer bears the burden
24 of proving the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109,
25 June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)² Unsupported assertions are not
26 sufficient to satisfy the taxpayer’s burden of proof with respect to an assessment based on federal
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28 ² Published decisions of the Board, such as *Appeal of Sheldon I. and Helen E. Brockett*, *supra*, are generally available on the Board’s website: www.boe.ca.gov.

1 action. (*Appeal of Aaron and Eloise Magidow*, 82 SBE-274, Nov. 17, 1982.) In the absence of
2 uncontradicted, credible, competent, and relevant evidence showing that the FTB's determinations are
3 incorrect, they must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18,
4 1980.) The taxpayer's failure to produce evidence that is within his control gives rise to a presumption
5 that such evidence is unfavorable to his case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

6 STAFF COMMENTS

7 Appellants should be prepared to demonstrate an error in the FTB's assessments. The
8 few materials submitted for this appeal do not indicate the nature of appellants' disagreements with the
9 IRS, if any disagreements still exist. The documents and records that appellants may have submitted to
10 the IRS during their federal audit are not available to the Board. Appellants may wish to submit those
11 records to the Board, along with an explanation about how they prove the federal adjustments (or the
12 FTB assessments) are incorrect.

13 If appellants or the FTB wish to provide additional information and documentation, it
14 should be provided *at least* fourteen days prior to the hearing to:

Claudia Madrigal, Board of Equalization
Board Proceedings Division
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