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8 **BOARD OF EQUALIZATION**  
9 **STATE OF CALIFORNIA**

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11 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
12 ) **PERSONAL INCOME TAX APPEAL**  
13 **FRANKLIN CASCO, JR.**<sup>2</sup> ) Case No. 512009  
14 \_\_\_\_\_ )

	<u>Year</u>	<u>Proposed Tax Assessment</u> <sup>3</sup>
	2003	\$4,586 tax

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18 Representing the Parties:

19  
20 For Appellant: Franklin Casco, Jr., appellant in propria persona  
21 For Franchise Tax Board: Marvin H. Stroud, Legal Assistant  
22

23 **QUESTION:** Whether appellant has demonstrated error in respondent's proposed assessment  
24 based on federal adjustments in a United States Tax Court decision agreed to by  
25

26 <sup>1</sup> This electronic mail address is the preferred address for any contact.

27 <sup>2</sup> Appellant resides in Irvine, Orange County.

28 <sup>3</sup> According to the Notice of Action (NOA) dated September 8, 2009, interest in the amount of \$1,792.34 accrued through that date.

1 appellant and the Internal Revenue Service (IRS)?

2 HEARING SUMMARY

3 Background

4 Appellant timely filed his 2003 California resident personal income tax return (Form  
5 540), reporting California Adjusted Gross Income (AGI) of \$1,216 and no taxable income.<sup>4</sup> Respondent  
6 subsequently received information from the IRS that it audited appellant's 2003 return and issued a  
7 federal notice of deficiency that imposed additional federal tax liability. Appellant instituted a United  
8 States Tax Court ("Tax Court") proceeding that resulted in the Tax Court on June 23, 2008 entering a  
9 decision that resulted in a revised deficiency assessment, in accordance with an agreement between  
10 appellant and the IRS. The Tax Court decision stated that appellant had a 2003 year federal tax  
11 deficiency of \$24,594, and imposed the Internal Revenue Code (IRC) section 6662(a) accuracy-related  
12 penalty in the amount of \$1,620. (See Respondent's Opening Brief, page 1, Exhibits C (IRS Notice of  
13 Deficiency) and E (Tax Court decision)).

14 On August 13, 2008, respondent received from the IRS copies of documents reflecting  
15 the June 23, 2008 Tax Court judgment. These documents indicated that appellant agreed to an upward  
16 increase of \$78,628 in his federal taxable income for 2003, offset by a \$5,555 increase in the self-  
17 employed AGI adjustment.<sup>5</sup> As a result, appellant's 2003 federal taxable income increased by \$73,073.  
18 Based upon this IRS and Tax Court information, and respondent's determination that the federal  
19 adjustments represented categories of income taxable under California law, respondent on March 19,  
20 2009 issued a Notice of Proposed Assessment (NPA) for additional 2003 tax of \$4,586, plus applicable  
21 interest, based on a revised California taxable income of \$70,789. On April 27, 2009, appellant timely  
22 protested the NPA, and in his protest letter argued that the FTB's "figures are incorrect" and that its  
23 NPA is "untimely" under "section 6103(d)."<sup>6</sup> On September 8, 2009, respondent issued a Notice of

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26 <sup>4</sup> Respondent's Opening Brief, Exhibits A and B (computer-generated return information).

27 <sup>5</sup> The adjustments appear to relate to income from a Schedule C business.

28 <sup>6</sup> Respondent's Opening Brief, Exhibit H. IRC section 6103(d) deals with the disclosure of federal return information to state and local agencies.

1 Action (NOA) affirming the NPA.<sup>7</sup> This timely appeal followed.

2 Contentions

3 Appellant's Contentions

4 In his appeal letter, appellant argues that he was "assessed by [the Federal Taxes Board]"  
5 and that the agency "lower[ed] their assessment" after appellant produced "supplemental  
6 documentation." Appellant further argues that respondent's "assessment of \$6,378.34 for the year 2003  
7 is unwarranted and unreasonable."

8 Respondent's Contentions

9 Respondent argues that the NPA and NOA are based upon the taxable income reflected in  
10 the Tax Court decision and IRS Individual Master File (IMF) federal adjustments documents, and  
11 respondent's California tax analysis reflected in the mocked up sample corrected returns attached as  
12 Exhibits K and L to respondent's Opening Brief. On the sample corrected federal return, respondent  
13 lists for appellant \$3,500 in line 21 "other income", and \$79,399 in Schedule C business income, offset  
14 by a \$3,000 capital loss, and \$5,610 in self-employment tax deduction, resulting in AGI of \$74,289.  
15 Respondent on the California sample corrected return uses the \$74,289 federal AGI number, and  
16 subtracts therefrom the 2003 California single filing status \$3,500 standard deduction, which results in  
17 \$70,789 California taxable income and a total tax liability of \$4,586 (after taking into account  
18 appellant's personal exemption credit). (See Respondent's Opening Brief, Exhibit K, pages 1-2 (sample  
19 federal return form 1040) Exhibit L (sample California return)).

20 Respondent further contends that appellant has not established error in the presumptively  
21 correct NPA based on Tax Court and taxpayer-agreed federal adjustments, nor has he submitted any  
22 evidence the IRS or the Tax Court revised or cancelled the Tax Court judgment changes. Respondent  
23 argues that there is a rebuttable presumption of correctness attached to a FTB NPA based on a federal  
24 adjustment (*Appeal of Der Wienerschitzel International, Inc.*, 79-SBE-063, Apr. 10, 1979). In addition,  
25 respondent argues that income tax deductions are a matter of legislative grace, and it is appellant's  
26 burden to show by competent evidence any entitlement to claimed deductions. (*Appeal of James C. and*  
27 \_\_\_\_\_)

28 <sup>7</sup> The NOA states that the NPA was affirmed because appellant did not reply to a FTB letter dated July 14, 2009. This letter is not in the record on appeal.

1 *Monablanche A. Walshe*, 75-SBE-073, Oct. 20, 1975; *New Colonial Ice Co. v. Helvering*, (1934) 292  
2 U.S. 435, 436). Respondent argues that because appellant has not pointed to an applicable statute or  
3 demonstrated through competent evidence that he is entitled to any claimed but denied deductions  
4 (*Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986), he has not met his burden of showing error in  
5 the federal assessments. (See Respondent’s Opening Brief, pages 2-3).

6 In response to appellant’s argument during protest that the NPA was not issued on a  
7 timely basis, respondent argues that IRC section 6103 is federal law and does not contain a statute of  
8 limitations. Respondent further the NPA was issued timely under the California R&TC section 19059,  
9 subdivision (a), which establishes a limitations period of two years from the IRS reporting date when  
10 federal adjustments are reported to respondent (by either the taxpayer or the IRS) within six months of  
11 the final federal determination date. (See Respondent’s Opening Brief, pages 3-4 and Exhibit J, pages  
12 1-2.) Respondent argues that it received notice of the federal changes from the IRS on August 13, 2008;  
13 appellant’s IRS IMF shows the federal adjustments became final on August 25, 2008, and the FTB  
14 mailed the NPA on March 19, 2009, less than one year after respondent received notice from the IRS.  
15 (See Respondent’s Opening Brief, page 3 and Exhibit M (page 3, transaction code 300)).

#### 16 Applicable Law

17 R&TC section 17041, subdivision (a)(1) imposes the Personal Income Tax, defined in the  
18 statute as a tax “. . . upon the entire taxable income of every resident of this state . . . .” R&TC section  
19 17071 expressly incorporates IRC section 61, which in subsection (a)(2) thereof expressly states that:  
20 “Except as otherwise provided in this subtitle, gross income means all income from whatever source  
21 derived, including (but not limited to)...[g]ross income derived from business...”

22 R&TC section 19059, subdivision (a), states if the IRS reports federal changes to  
23 respondent within six months of the final federal determination date, respondent may issue a NPA  
24 “within two years from the date when the notice is filed with the FTB by the . . . Internal Revenue  
25 Service . . .” Federal Treasury Regulation section 301.6203-1 states that a federal assessment is agreed  
26 to when the IRS enters in the taxpayer’s IMF an entry listing the name of the taxpayer, the character of  
27 the liability assessed, the taxable period, and the amount of the assessment.

28 A deficiency assessment based on a federal determination is presumptively correct and

1 the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and*  
2 *Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)  
3 Unsupported assertions are not sufficient to satisfy appellant's burden of proof with respect to an  
4 assessment based on federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17,  
5 1982.)

#### 6 STAFF COMMENTS

##### 7 Timeliness of the NPA

8 Respondent's NPA appears to be timely, because it was issued on March 19, 2009; the  
9 federal adjustments were reported to FTB by the IRS on August 13, 2008; and were agreed to by  
10 appellant and went final on August 25, 2008, approximately two months after the June 23, 2008 Tax  
11 Court decision. The NPA issue date of March 19, 2009 is within two years of June 23, August 13, or  
12 August 25 of 2008.

##### 13 Federal Adjustments

14 The federal adjustments are included in both the Tax Court judgment and the IRS  
15 adjustments document agreed to by appellant, and these adjustments appear in appellant's IRS IMF.  
16 Thus, it appears that appellant's only recourse is to meet his burden of demonstrating that the federal  
17 adjustments are incorrect as a matter of California law. (*See Appeal of Robert R. Telles, supra.*)  
18 Therefore, at the hearing, appellant should be prepared to demonstrate the taxable income adjustments  
19 contained in the Tax Court decision and that he agreed to with the IRS during 2008 represent either  
20 erroneous federal action, or represent categories of income not taxed under California law or represent  
21 allowable deductions, which are a matter of legislative grace, and where it is appellant's burden to show  
22 by competent evidence his entitlement to any of them. (*Appeal of James C. and Monablance A.*  
23 *Walshe, supra; New Colonial Ice Co. v. Helvering, supra.*)

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28 Appeal of Franklin Casco, Jr.

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review. It does not represent the Board's decision or opinion.