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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **CARLOS CASTANEDA AND**) Case No. 626196
13 **MICHELLE CASTANEDA¹**)
14 _____)

	<u>Years</u>	<u>Proposed Assessments</u>
	2003	\$ 278
	2004	\$ 830
	2005	\$ 336

18 Representing the Parties:

19 For Appellants: Carlos J. Castaneda

20 For Franchise Tax Board: Richard I. Tay, Tax Counsel

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22 **QUESTION:** Whether respondent's deficiency assessments for the 2003, 2004, and 2005 tax
23 years are barred by the applicable statute of limitations.

24 **HEARING SUMMARY**

25 Background

26 Appellants filed a timely return for the 2003 tax year, in which appellants reported
27 _____

28 ¹ Appellants reside in Downey, Los Angeles County.

1 \$52,834 of adjusted gross income (AGI) and claimed \$48,121 in itemized deductions, resulting in a
2 taxable income of \$4,713, and a reported tax of \$47. After applying appellants' dependent and
3 personal exemption credits, appellants' reported tax liability was zero. Appellants claimed a refund of
4 their withholding credit in the amount of \$1,262, which was refunded to appellants. (Resp. Op. Br.,
5 p. 1, Exhs. A & B.)

6 Appellants filed a timely return for the 2004 tax year, in which appellants reported
7 \$68,456 of AGI and claimed \$55,917 in itemized deductions, resulting in a taxable income of \$12,539,
8 and reported tax of \$127. After applying appellants' dependent and personal exemption credits,
9 appellants' reported tax liability was zero. Appellants claimed a refund of their withholding credit in
10 the amount of \$1,560, which was refunded to appellants. (Resp. Op. Br., pp. 1-2, Exhs. C & D.)

11 Appellants filed a timely return for the 2005 tax year, in which appellants reported
12 \$70,978 of AGI and claimed \$53,507 in itemized deductions, resulting in a taxable income of \$17,471
13 and reported tax of \$224. After applying appellants' dependent and personal exemption credits,
14 appellants' reported tax liability was zero. Appellants claimed a refund of their withholding credit in
15 the amount of \$1,923, which was refunded to appellants. (Resp. Op. Br., p. 2, Exhs. E & F)

16 The Internal Revenue Service (IRS) subsequently audited appellants' federal returns for
17 the 2003, 2004, and 2005 tax years, and made adjustments to appellants' income that increased
18 appellants' taxable income for the 2003, 2004, and 2005 tax years. Appellants did not notify
19 respondent of these federal adjustments.

20 According to the Franchise Tax Board (respondent or FTB), it received information on
21 September 12, 2011, from the IRS regarding the adjustments to appellants' tax years in the form of
22 FEDSTAR IRS Data Sheets (Revenue Agent Reports (RARs)) for each year at issue. Based on this
23 information, respondent issued Notices of Proposed Assessment (NPAs) for the 2003, 2004 and 2005
24 tax years on May 21, 2012. (Resp. Op. Br., p. 2, Exh. G; Appeal Letter, Atths.)

25 Appellants timely protested the NPAs, asserting that the assessments were untimely.
26 Appellants provided a copy of a December 7, 2006 Form 950 Letter (Form 950 Letter) and
27 accompanying examination report, titled Form 4549-A "Income Tax Discrepancy Adjustments" (Form
28 4549-A Examination Report). They asserted that respondent became aware of the federal assessments

1 more than four years before the date of the NPAs. By letter dated July 18, 2012, respondent explained
2 that appellants were required to notify respondent following the federal changes or corrections and
3 appellants failed to do so. Respondent stated that it was informed of the federal changes by the IRS on
4 September 12, 2011, and pursuant to Revenue and Taxation Code (R&TC) section 19060, respondent
5 had four years from September 12, 2011, to issue timely NPAs. Appellant-husband subsequently
6 contacted respondent's employees on two occasions and followed up with letters dated July 27, 2012,
7 and July 31, 2012, contending that the NPAs had not been issued in a timely manner. After review,
8 respondent affirmed its NPAs by issuing Notices of Action (NOAs) on August 9, 2012. (Resp. Op.
9 Br., pp. 2-3; Appeal Letter, Atths.)

10 This timely appeal then followed.

11 Contentions

12 Appellants' Appeal Letter

13 Appellants contend that the FTB failed to issue the NPAs within four years of the date of
14 the final federal determination. Appellants contend that the IRS issued Form 950 Letter and the
15 accompanying Form 4549-A Examination Report on December 7, 2006, which detailed the federal
16 adjustments to the 2003, 2004, and 2005 tax years. While appellants acknowledge that the federal
17 matter was ultimately resolved at a later time and for a lesser amount than shown on the Form 4549-A
18 Examination Report, they contend the date of the final federal determination is December 7, 2006.
19 Appellants contend that the final federal determination date is the date on which an IRS officer signs a
20 summary record of assessment that identifies the taxpayer, the character of the liability assessed,
21 taxable period, and the amount of the assessment. Accordingly, appellants contend that the Form
22 4549-A Examination Report falls within the definition of a final federal determination. (Appeal Letter,
23 pp. 1-2, Atths.)

24 Appellants also claim that the FTB became aware of the Form 4549-A Examination
25 Report prior to May 21, 2008, and therefore, the May 21, 2012 NPAs are barred by the four year statute
26 of limitations. Appellants contend that, as the IRS shares information with the FTB, it is highly
27 unlikely that the FTB only became aware of the December 7, 2006 examination report on or after
28 May 21, 2008. Appellant-husband states that during his discussion with the FTB's employees, they

1 could not agree on a definition of final federal determination. Appellant-husband asserts that the FTB
2 employees refused to provide him with the date that the FTB received notice of the federal adjustments.
3 In addition to copies of the NPAs and NOAs, appellants provide copies of their protest letters and
4 subsequent correspondence with the FTB. (Appeal Letter, p. 3, Atths.)

5 Respondent's Opening Brief

6 Respondent contends that if it is notified of the federal changes after six months of the
7 date of the final federal determination, the FTB may issue a notice of deficiency within four years from
8 the date of the notification or the date that the taxpayers file an amended return, citing R&TC section
9 19060, subdivision (b). (Resp. Op. Br., pp. 3-4.)

10 Respondent contends that appellants incorrectly assert that the date of their final federal
11 determination was December 7, 2006. Respondent contends that this is not the date of the final federal
12 determination because appellants disputed the federal adjustments by filing a petition in United States
13 Tax Court (Tax Court). Respondent contends that the date of each final federal determination is the
14 date when each federal adjustment or resolution is assessed to appellants' federal account by the IRS,
15 citing R&TC section 18622 and Internal Revenue Code (IRC) section 6203. Respondent notes that
16 according to the federal Account Transcripts for the years at issue, the final federal determination date
17 for each year was September 8, 2008, when the federal determinations were assessed to appellants'
18 federal account following resolution of the federal dispute in Tax Court. (Resp. Op. Br., p. 4, Exhs. I,
19 J, & K, Transaction Codes 300.)

20 Respondent contends it was first notified of the federal changes on September 12, 2011,
21 which was after the six-month period required in R&TC section 18622. As such, respondent contends
22 that it had four years from the date of the notice on September 12, 2011, to issue the NPAs. Since the
23 NPAs were issued on May 21, 2012, respondent contends that the NPAs were issued timely. (Resp.
24 Op. Br., p. 4.)

25 Respondent further contends that appellants' argument regarding the IRS information
26 sharing program is not supported by the facts or the law. Respondent contends that the exchange of
27 information practice does not relieve taxpayers of their duty to report the federal adjustments or file an
28 amended return for each year on appeal. Respondent further contends that it has no knowledge of the

1 reason for, nor any control over, any delay by the IRS in forwarding the RAR to the FTB following
2 resolution of the federal matter in Tax Court. Respondent states that under normal procedures, the IRS
3 usually provides the FTB with a copy of the RAR within one year of the close of the federal action,
4 although in a significant number of cases, the FTB has received the RAR well after the one year period.
5 (Resp. Op. Br., pp. 4-5.)

6 Appellants' Reply Brief

7 Appellants contend the FTB refuses to disclose all information it received from federal
8 taxing authorities and instead, the FTB only provides information and documents beneficial to the
9 FTB's arguments. Appellants contend that, according to interactions with the FTB employees, the
10 NPAs were based on original IRS adjustments for the tax years at issue. Appellants contend that the
11 FTB employees would not confirm whether the original IRS adjustment was the information received
12 on September 12, 2011, and the FTB did not provide appellants with their "FTB file" as they requested.
13 Appellants argue that the statements made by the FTB employees suggest that other information and
14 documents exist which could resolve these appeals. (App. Reply Br., pp. 1-2.)

15 Appellants contend IRC section 6203,² Treasury Regulation section 301.6203-1³
16 supports their position that the assessment, and consequently a final federal determination, occurs when
17 the IRS officer signs a summary record of assessment that identifies the taxpayer, the character of the
18 liability assessed, taxable period, and the amount of the assessment. Appellants further contend that the
19 date of the final federal determination is the date the IRS officer signs the summary record. Appellants
20 assert that the intent of R&TC section 18622 is to adopt the federal interpretation of the final federal

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24 ² IRC section 6203 provides that an assessment shall be made by recording the liability of the taxpayer in the office of the
Secretary (of the IRS) in accordance with the rules or regulations promulgated by the Secretary (of the IRS).

25 ³ As relevant to appellants' contention, the Treasury Regulation section 301.6203-1 provides:

26 The assessment shall be made by an assessment officer signing the summary record of assessment. The
27 summary record, through supporting records, shall provide identification of the taxpayer, the character of
the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of
28 the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in
all other cases the amount of the assessment shall be the amount shown on the supporting list or record.
The date of the assessment is the date the summary record is signed by an assessment officer.

1 determination, citing an FTB Legislative Change Notice No. 99-42, dated October 10, 1999.⁴
2 Accordingly, appellants contend that the Form 4549-A Examination Report meets the requirements to
3 be considered a final federal determination in IRC section 6203 and Treasury Regulation section
4 301.6203-1. (App. Reply Br., pp. 3-5, Exh. 1.)

5 Appellants further assert that the federal Account Transcripts cited by the FTB are
6 unreliable because the transcripts list more than one Transaction Code 300 for each year at issue.
7 According to the IRS Transaction Codes Pocket Guide, appellant notes that Transaction Code 300 is
8 defined as “additional tax or deficiency assessment by examination.” Accordingly, appellants contend
9 that the federal Account Transcripts cannot be reasonably relied upon to determine when any
10 Transaction Code 300 entries were made as the documents contradict themselves. (App. Reply Br., pp.
11 5-6, Exhs. 2 & 3.)

12 Appellant also contends that they are unable to determine what information the IRS
13 shared with the FTB because the FTB refused to disclose when and what information it received.
14 Appellants assert that the documents respondent provided in this appeal are documents that it “ordered”
15 from the IRS. Appellants claim that the FTB has not attached any document produced by the IRS
16 pursuant to the information sharing program. Appellants assert that the FTB only relies on documents
17 it ordered from the IRS, the RARs and the federal Account Transcripts. Appellant contends there is no
18 legal authority for the FTB’s position that the final federal determination and the resulting statute of
19 limitations are determined by receipt of these documents. With regard to the federal Account
20 Transcripts, appellants assert that they should be given very limited evidentiary weight because it only
21 provides basic information from a tax return and appellants allege that the Account Transcripts do not
22 show or prove what information the IRS shared with the FTB. In addition, appellants allege that these
23 transcripts have contradictory information and therefore reliance on these transcripts is not proper.
24 Appellants question whether the alleged RARs provided by respondent are the accurate documents.
25 Appellants appear to contend that RARs are made only on IRS Form 4549 and the documents provided
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28 ⁴ According to this notice, the amendments to R&TC section 18622 defines the final federal determination date as “the date on which each adjustment or resolution (assessment, refund or no change) resulting from an [IRS] examination is assessed pursuant to IRC section 6203.” The notice further describes that the amendments to R&TC section 18622 clarify that the statute of limitations starts when sufficient notice is provided to the FTB by the taxpayer or by the IRS.

1 by the FTB do not comply with the description set forth on the IRS website. With regard to the FTB's
2 reliance on the "FTB Received Date: 9/12/2011" noted on the RARs, appellants question how the IRS
3 would know when the FTB receives the report. In addition, appellants note that the RARs also states a
4 "REPORT DATE: 4/28/2008." Appellants question how one can rely on the RARs as it lists multiple
5 dates. As such, appellants contend that these RARs do not establish when the IRS advised respondent
6 of the federal adjustments. Appellants further contend that the Account Transcripts and the RARs do
7 not confirm what information the IRS provided to the FTB. Even if these documents were the only
8 available information, appellants claim that reliance on these documents is problematic. (App. Reply
9 Br., pp. 6-9, Exhs. 4, 5, 6, & 7.)

10 Respondent's Reply Brief

11 Respondent contends that a final federal determination does not include an IRS
12 examination report of proposed adjustments to a taxpayer's income tax return. Respondent contends
13 that, for purposes of R&TC section 18622 and IRC section 6203, the Board, the courts, and the FTB
14 have interpreted "assessment" to mean a final assessment, and not a proposed assessment, citing *United*
15 *States v. Hunt* (E.D. Va 2011) 107 A.F.T.R.2d (RIA) 2685, *Ordlock v. Franchise Tax Board* (2006) 38
16 Cal.4th 897, *Schatz v. Franchise Tax Board* (1999) 69 Cal.App.4th 595, the *Appeal of Don L. and*
17 *Marilu Eddlemon*, 95-SBE-015, decided by the Board on December 12, 1995. Respondent further
18 notes than in *United States v. Hunt, supra*, the federal district court specifically stated that an IRS form
19 containing proposed adjustments does not constitute a final federal determination. Respondent
20 contends that in the present appeal, the Form 4549-A Examination Report clearly contained proposed
21 adjustments, as specifically delineated in the accompanying cover letter, Form 950 Letter. With regard
22 to appellants' contention that the Form 4549-A Examination Report meets the form requirements of an
23 assessment under IRC section 6203, respondent asserts that the form requirements of the document is
24 not controlling. Respondent contends that appellants' argument fails to conform to well-established
25 law that a final federal determination is a final assessment. (Resp. Reply Br., 1-2.)

26 Respondent further contends that California Code of Regulations, title 18 (Regulation),
27 section 19059, subdivision (e), defines a final federal determination as "an irrevocable determination or
28 adjustment of a taxpayer's federal tax liability from which there exists no further right of appeal either

1 administrative or judicial.” Respondent contends that as appellants disputed the proposed assessments
2 in Tax Court, the Form 4549-A Examination Report did not constitute a final federal determination.
3 Respondent maintains that the law is clear that the date of each final federal determination is the date
4 on which each federal adjustment is “assessed.” Respondent contends this occurred on September 8,
5 2008, when the assessments were recorded on appellants’ federal account, as reflected on the federal
6 Account Transcripts. (Resp. Reply Br., p. 2.)

7 Respondent also contends that the only information the IRS sent respondent notifying
8 the FTB of the federal changes were the RARs that the FTB received on September 12, 2011.
9 Respondent further contends that the federal Account Transcripts are reliable evidence of appellants’
10 2003, 2004, and 2005 federal tax year accounts. Respondent maintains that the federal Account
11 Transcripts show that the IRS recorded a final assessment on appellants’ accounts for the years at issue
12 on September 8, 2008. Respondent states that this is supported by appellants’ individual master file
13 (IMF) transcripts. With regard to appellants’ contention that the federal Account Transcripts are
14 unreliable based on the repeated use of Transaction Code 300, respondent states that the reason for the
15 repeated Transaction Code 300 entries is due to the fact that appellants contested the proposed federal
16 adjustments. Respondent notes that the first Transaction Code 300 recorded on June 4, 2007, relates to
17 the conclusion of the audit of appellants’ 2003, 2004 and 2005 tax years. Because appellants contested
18 the audit findings in Tax Court, there was no dollar assessment recorded on the June 4, 2007
19 Transaction Code 300, as there was no final determination. Respondent contends that it was not until
20 the Tax Court matter was resolved that the final federal determinations were recorded on appellants’
21 federal Account Transcripts on September 8, 2008. (Resp. Reply Br., pp. 2-3, Exh. L.)

22 Appellants’ Second Reply Brief

23 Appellants assert that respondent relies on inappropriate case law authority. With regard
24 to *United States v. Hunt, supra*, appellants contend that this case is non-controlling case authority and
25 the court did not provide any analysis of a final federal determination or mention R&TC section 18622
26 or IRC section 6203. With regard to *Ordlock v. Franchise Tax Board, supra*, appellants contend that
27 while the court discussed the general applicability of the statute of limitations, the court did not provide
28 any analysis of a final federal determination or mention R&TC section 18622 or IRC section 6203.

1 Appellants further contend that the *Ordlock* court did not interpret “assessment” to mean a final
2 assessment. Appellants contend that *Schatz v. Franchise Tax Board, supra*, similarly does not support
3 respondent’s position that an assessment must be a final assessment to be a final federal determination.
4 Appellants contend that the *Schatz* court merely determined that a state tax deficiency is “assessed” for
5 bankruptcy discharge purposes when the assessment becomes final through the passage of time or at
6 the end of the appeal period. With regard to the *Appeal of Don L. and Marilu Eddlemon, supra*,
7 appellants contend the Board merely determined that when a taxpayer signed a settlement form with the
8 IRS, the subsequent date on which the deficiency is assessed by the IRS is the final federal
9 determination for purposes of the four year statute of limitations in R&TC section 18586.2
10 (subsequently renumbered to R&TC section 19060). Appellants contend that this Board decision does
11 not relate to the present matter due to material differences of fact. (App. 2nd Reply Br., pp. 1-2.)

12 Appellants further contend that, rather than challenging the Form 4549-A Examination
13 Report itself, respondent focuses its attention on the Form 950 Letter, the cover letter for Form 4549-A
14 Examination Report.⁵ Appellants also contend respondent adopts and supports conflicting definitions
15 of a final federal determination in Regulation section 19059, subdivision (e); R&TC section 18622,
16 subdivision (d); and IRC section 6203. Appellants maintain that the correct interpretation of a final
17 federal determination includes the Form 4549-A. Lastly, appellants contend that, even if the
18 Transaction Code 300 entries on the federal Account Transcripts qualified as a final federal
19 determination, the conflicting Transaction Code 300 entries create an ambiguity which must be
20 resolved in favor of the taxpayer, citing *Ordlock, supra*, and *Wunderlich v. County of Santa Cruz*
21 (2009) 178 Cal.App.4th 680. (App. 2nd Reply Br., pp. 2-5.)

22 Applicable Law

23 R&TC section 19057, subdivision (a), provides generally that every NPA shall be
24 mailed to the taxpayer within four years after the return was filed. For the statute of limitations related
25 to deficiency assessments based on federal changes, the applicable statutes are set forth in R&TC
26 sections 19059 and 19060, and depend on when the federal changes are reported to the FTB.

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28 ⁵ Appellants appear to acknowledge that the December 7, 2006 Form 950 letter was accompanied by the examination report
titled Form 4549-A.

1 R&TC section 18622, subdivision (a), provides, in pertinent part, that if the IRS makes
2 any changes or corrections to a taxpayer's federal return that would increase a taxpayer's California tax
3 liability, that taxpayer is required to report each change or correction within six months after the final
4 federal determination of the change or correction and concede the accuracy of the determination or state
5 why it is erroneous. R&TC section 18622, subdivision (d), provides in part, that the date of each final
6 federal determination shall be the date on which each adjustment or resolution resulting from an IRS
7 examination is assessed pursuant to IRC section 6203.

8 R&TC section 19059, subdivision (a), provides a two year statute of limitations for the
9 FTB to issue a deficiency when the taxpayers report federal changes to the FTB as required by R&TC
10 section 18622 within six months of the final federal determination or the IRS reports the federal
11 changes to the FTB within 6 months of the final federal determination. The FTB may issue a
12 deficiency within two years from the date that the taxpayer or the IRS notifies respondent of that
13 change or correction. (Rev. & Tax. Code, § 19059, subd. (a).)

14 Subdivision (a) of Regulation 19059 states that taxpayers are required to report certain
15 specified federal changes pursuant to R&TC section 18622, and such notification shall be made by
16 mailing "the original or a copy of the final determination or renegotiation agreement as well as any
17 other data upon which such final determination or renegotiation agreement is claimed." Regulation
18 19059, subdivision (e), defines a final determination as "an irrevocable determination or adjustment of
19 a taxpayer's federal tax liability from which there exists no further right of appeal either administrative
20 or judicial."

21 R&TC section 19060, subdivision (a), provides, in pertinent part, that if a taxpayer fails
22 to report changes or file an amended return as required by R&TC section 18622, a notice of deficiency
23 may be mailed to the taxpayer at any time. R&TC section 19060, subdivision (b), provides, in
24 pertinent part, that if the taxpayers report federal changes to the FTB after the six-month period
25 delineated in R&TC section 18622 or the IRS reports the federal change or correction to the FTB after
26 the six-month period from the date of the final federal determination, the FTB may issue a notice of
27 deficiency to the taxpayer within four years from the date of the notification.

28 In *Ordlock v. Franchise Tax Board, supra*, the Supreme Court of California held where

1 taxpayers failed to report to the FTB a final federal determination that resulted in an increase of their
2 California tax liability, the FTB may issue a deficiency at any time to the taxpayer as set forth in R&TC
3 section 19060, subdivision (a). (*Ordlock v. Franchise Tax Bd., supra* at 902.) The *Ordlock* court stated
4 that when the FTB issues a deficiency based on a change or correction made by the IRS, the specific
5 statute of limitations in R&TC sections 19059 and 19060 applies, rather than the general statute of
6 limitations in R&TC section 19057. (*Ordlock v. Franchise Tax Bd., supra* at 910.)

7 In *Sahadi v. Scheaffer* (Cal. Ct. App. 2007) 155 Cal.App.4th 704, 716 (*Sahadi*), the
8 California Court of Appeals for the Fourth Appellate District explained the general procedures involved
9 in federal tax audits, citing *Int'l Engine Parts, Inc., et. al. v. Feddersen & Co.* (Cal. 1995) 9 Cal.4th
10 606. The *Sahadi* court noted that, at the conclusion of an IRS examination, the taxpayer is sent a report
11 of the examiner's findings, indicating any proposed deficiency assessments. (*Sahadi v. Scheaffer,*
12 *supra* at 716.) The *Sahadi* court explained that if the taxpayer agrees with the findings of the examiner,
13 the taxpayer will sign the appropriate forms (Form 4549 or Form 870), acknowledging the tax liability.
14 (*Id.*) The *Sahadi* court further explained that preliminary findings of the tax examiner are proposed
15 findings that are subject to negotiation prior to any determination of tax deficiency. (*Id.*) The *Sahadi*
16 court also explained that once a deficiency is assessed, by the taxpayer's consent to deficiency
17 assessment or by receipt of a final deficiency notice, the matter is final as to the IRS. (*Id.*)

18 In *Schatz v. Franchise Tax Board, supra*, the California Court of Appeals for the Third
19 Appellate District held that, for bankruptcy discharge purposes, a state income tax deficiency is
20 assessed "...when the assessment contained in a notice of proposed deficiency assessment becomes
21 final, either through the passage of time or at the end of an appeal period. This is the point at which the
22 state, the taxing sovereign, has formally acted to finally fix the tax liability." (*Schatz v. Franchise Tax*
23 *Bd., supra* at 597. The *Schatz* court reasoned that an "[a]ssessment' is a formal act of fixing of tax
24 liability that carries with it significant legal consequences. Assessment is not only the calculation of
25 taxes, but the fixing of the amount payable. Once the tax is assessed the taxpayer will owe the
26 sovereign that amount." (*Schatz v. Franchise Tax Bd., supra* at 605.)

27 In the *Appeal of Don L. and Marilu Eddlemon, supra*, the Board determined that, where
28 the taxpayer and the IRS mutually executed an informal non-statutory settlement agreement and the

1 deficiency was subsequently assessed, the date of the final federal determination is the date the
2 deficiency was assessed and not the date the settlement agreement was executed.

3 STAFF COMMENTS

4 It appears to staff that the IRS issued the December 7, 2006 Form 950 Letter to inform
5 appellants of proposed adjustments and the Form 950 Letter references the proposed adjustments in the
6 accompanying Form 4549-A Examination Report. Staff notes that the Form 950 Letter provided
7 appellants the option to either accept the proposed federal adjustments contained in the examination
8 report or contest them through an appeals process at the IRS and Tax Court. Although appellants
9 contend that the federal adjustments were assessed on December 7, 2006, a review of their federal
10 Account Transcripts does not reflect any additional tax assessed on December 7, 2006, for any of the
11 years at issue.

12 Furthermore, Regulation 19059, subdivision (e), provides that a final federal
13 determination is “an irrevocable determination or adjustment of a taxpayer’s federal tax liability from
14 which there exists no further right of appeal either administrative or judicial.” Staff notes that
15 appellant’s Form 4549-A was not signed by appellants and appellants acknowledge that they contested
16 the proposed assessments contained therein. Since appellants had the opportunity to contest the
17 adjustments indicated in the Form 950 Letter and the accompanying Form 4549-A Examination Report,
18 it appears to staff that both of these forms do not constitute a final federal determination. Although
19 appellants appear to contend that the Board should focus solely on the Form 4549-A Examination
20 Report, it appears that if the Form 950 Letter is considered not an assessment, then the accompanying
21 report detailing the proposed adjustments referenced in the letter cannot be considered an assessment.
22 This interpretation appears to be supported by the *Sahadi* court’s explanation of federal audit
23 procedures in *Sahadi v. Scheaffer, supra*, as well as *United States v. Hunt, supra*, in which a federal
24 District Court in Virginia explained that a Form 950 Letter is not an assessment for purposes of IRC
25 section 6203, even though the letter may meet the requirements set out in IRC section 6203 and
26 Treasury Regulation 301.6203-1. While appellants contend that *United States v. Hunt, supra*, is not
27 binding authority, it appears to staff that the Board may consider this case as persuasive authority.

28 According to the federal Account Transcripts for each year at issue, it appears that the

1 date of the final federal determinations for each year at issue is September 8, 2008, when the IRS
2 closed its examination of appellants' tax years at issue (Transaction Code 421) and the amounts of the
3 additional federal tax liability were assessed to appellants' federal accounts for each year (Transaction
4 Code 300). The federal Account Transcripts for each year at issue show two entries with Transaction
5 Code 300 "additional tax assessed by examination." The first Transaction Code 300 was recorded on
6 June 4, 2007, and reflects a zero amount. The second Transaction Code 300 was recorded on
7 September 8, 2008, after the Tax Court litigation was resolved and reflects additional tax liabilities of
8 \$3,592 for the 2003 tax year, \$6,048 for the 2004 tax year, and \$1,803 for the 2005 tax year. Thus, it
9 appears that the amounts of the additional federal tax liability were assessed on September 8, 2008, as
10 reflected in the second Transaction Code 300. This is consistent with appellants' IMF transcripts
11 which show the amounts of the additional federal tax liabilities were assessed on September 8, 2008.
12 With regard to appellants' contention that the federal Account Transcripts are contradictory and
13 ambiguous based on the multiple Transaction Code 300 entries, the multiple Transaction Code 300
14 entries merely reflect appellants' protest of the proposed federal adjustments.

15 With regard to when the FTB was notified of the final federal determinations, staff notes
16 that appellants have not provided any evidence demonstrating the FTB received notice of the final
17 federal determinations prior to the September 12, 2011 RARs. Appellants appear to offer only
18 unsubstantiated claims that the FTB must have received it prior to May 21, 2008, as part of the
19 information sharing program between the IRS and the FTB, and based on appellant-husband's
20 allegations that the FTB employees allegedly refused to tell him over the telephone the date when the
21 FTB received the notice of the final federal determinations. It appears to staff that it is unlikely that the
22 FTB could receive notice of the final federal determinations prior to May 21, 2008, as the federal
23 determinations for each year at issue became final on September 8, 2008. In addition, contrary to
24 appellants' contention that respondent failed to submit all information and documents the FTB received
25 from the IRS, it appears that the only information the FTB received from the IRS are the RARs it
26 received on September 12, 2011. Further, appellants' general information regarding the IRS
27 information sharing program does not show that the FTB must have received information from the IRS
28 prior to September 12, 2011. In contrast, the FTB provided copies of the RARs that reflect a notation

1 that the FTB received the RARs on September 12, 2011. Appellants question the reliability of the
2 RARs as they show a “Report Date” and an “FTB Received Date.” Respondent may wish to address
3 the meaning of “Report Date” in comparison to the “FTB Received Date” and discuss how and when it
4 receives notices from the IRS of IRS determinations. It appears to staff that if respondent was first
5 notified of the final federal determinations on September 12, 2011, then the NPAs issued on May 21,
6 2012, were timely issued within the four year statute of limitations pursuant to R&TC section 19060,
7 subdivision (b).

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