



FACTUAL FINDINGS2008 Tax Year

1. Appellants timely filed their 2008 California Resident Income Tax Return, which respondent accepted.
2. On September 15, 2010, appellants filed an amended 2008 California Resident Income Tax Return reporting a federal adjusted gross income of \$453,629. Respondent accepted appellants' amended 2008 return.
3. On October 7, 2013, a final federal determination was made that adjusted appellants' 2008 federal tax account. Appellants did not report this adjustment to respondent.
4. On January 2, 2015, respondent received information from the Internal Revenue Service (IRS) reporting the final federal determination that adjusted appellants' 2008 federal return. Specifically, the IRS increased appellants' federal adjusted gross income to \$535,090. The IRS also imposed an accuracy-related penalty of \$1,467. Based on this information, respondent made corresponding adjustments to appellants' 2008 California tax account. This resulted in a proposed additional tax of \$7,377 and an accuracy-related penalty of \$1,475.40. Respondent issued a Notice of Proposed Assessment (NPA) dated March 15, 2016, informing appellants of the proposed California adjustments.
5. Appellants protested the NPA.
6. Respondent explained to appellants that the California adjustments were based on the changes to appellants' 2008 federal tax return as reported by the IRS. Appellants did not respond to respondent's explanation, and respondent issued a Notice of Action (NOA) affirming the NPA.
7. This timely appeal followed.

2009 Tax Year

8. Appellants timely filed their 2009 California Resident Income Tax Return, which respondent accepted.
9. On September 15, 2010, appellants filed an amended 2009 California Resident Income Tax Return, which respondent accepted.
10. On April 12, 2011, appellants filed a second amended 2009 California Resident Income Tax Return, which respondent accepted.

11. On October 7, 2013, a final federal determination was made that adjusted appellants' 2009 federal tax account.
12. On October 28, 2013, appellants filed a third amended 2009 California Resident Income Tax Return, reporting a new federal adjusted gross income of \$483,464 based on the final federal determination. Appellants stated that they were audited by the IRS, and they attached an IRS Form 4549B, Income Tax Examination Changes, to their amended California return. Respondent accepted the return as filed.
13. On January 2, 2015, respondent received information from the IRS that also reported the final federal determination that adjusted appellants' 2009 federal return. Specifically, the IRS increased appellants' federal adjusted gross income to \$491,670. The IRS also imposed an accuracy-related penalty of \$1,383.42. Based on this information, respondent made corresponding adjustments to appellants' 2009 California tax account. This resulted in a proposed additional tax of \$784 and an accuracy-related penalty of \$156.80. Respondent issued an NPA dated March 15, 2016, informing appellants of the California adjustments.
14. Appellants protested the NPA.
15. Respondent informed appellants that the California adjustments were based on the changes to appellants' 2009 federal tax return as reported by the IRS. Appellants did not respond to respondent's explanation, and respondent issued an NOA affirming the NPA.
16. This timely appeal followed.
17. On January 9, 2019, respondent obtained appellants' federal account transcripts for the 2008 and 2009 tax years.

### DISCUSSION

#### Issue 1 – Whether appellants have established error in respondent's proposed assessment for the 2008 tax year, which is based on a federal determination.

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that respondent's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) In the

absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

Here, respondent received information from the IRS that appellants' federal adjusted gross income was adjusted for the 2008 tax year. Specifically, the IRS increased appellants' adjusted gross income to \$535,090. Furthermore, according to appellants' 2008 federal account transcript, which was obtained in January 2019, appellants' adjusted gross income did not change from the amount reported by the IRS. Thus, it appears that the 2008 federal determination was not adjusted or canceled, and it is appellants' burden to show that respondent's proposed assessment is erroneous.

Appellants argue that respondent has not communicated the reason for the additional tax listed in the NPA or the rationale for the NOA. As a result, appellants contend that they are unable to present their case on appeal. However, respondent's opening brief sets forth its position as to the history and reasoning for the proposed assessment for the 2008 tax year. In addition, the NPA stated that the proposed assessment was "based on information provided to [respondent] by the [IRS]." The NOA similarly include a small paragraph explaining respondent's rationale for affirming the NPA. Appellants have not made or attempted to make any substantive arguments explaining why respondent's proposed assessment is erroneous. Therefore, we find that this argument is not persuasive.

Appellants also argue that they requested an informal hearing with respondent, which they never received. We note that this argument does not impact the sufficiency of the NPA or the amount at issue. Thus, we have no jurisdiction to make any adjustments based on this argument. (See Cal. Code Regs., tit. 18, § 30104(d).)

Based on the foregoing, we find that appellants have not met their burden of proof and no adjustment is warranted for the 2008 tax year.

Issue 2 – Whether respondent's proposed assessment for the 2009 tax year is barred by the statute of limitations, and if not, whether appellants have established error in respondent's proposed assessment for the 2009 tax year, which is based on a federal determination.

If the IRS makes a change or correction to "any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year," the taxpayer must report the federal change to respondent within six months after the date it becomes final. (R&TC, § 18622(a).) If the taxpayer or the IRS reports the change or correction within six

months after the final federal determination, respondent may issue an NPA resulting from those adjustments within two years from the date of the notice. (R&TC, § 19059(a).) If the taxpayer or the IRS reports that change or correction after the six-month period, respondent may issue an NPA resulting from those adjustments within four years from the date of the notification. (R&TC, § 19060(b).) If the taxpayer fails to report the change or correction, respondent may issue an NPA resulting from those adjustments at any time. (R&TC, § 19060(a).) The specific statute of limitations set forth in R&TC section 19060 override the general statute of limitations set forth in R&TC section 19057. (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897.)

Appellants argue that they filed an amended return for the 2009 tax year after the federal adjustments were final. As a result, they contend that respondent's NPA for the 2009 tax year was issued outside of the statute of limitations.

There is no dispute that the final federal determination date is October 7, 2013. In addition, there is no dispute that appellants filed an amended return on October 28, 2013, which was within six months of the final federal determination. Although respondent has concluded that this amended return did not constitute notification of the federal adjustments, we disagree. The October 28, 2013 amended return contained an explanation that appellants had been audited by the IRS and that the amended return was to account for the adjustments pursuant to the IRS's final federal determination. Appellants also included an IRS Form 4549B, Income Tax Examination Changes, which listed the federal adjustments to appellants' 2009 tax year.

R&TC section 18622(c) states that notification of a change by the IRS shall be reported in the form and manner as prescribed by respondent. According to respondent's Publication 1008, the method of notification requires that a taxpayer do all of the following: inform respondent that a final federal determination or IRS change has been made; identify the adjusted tax year; fully explain all adjustments; and provide federal documentation showing the adjustments made to taxable income. Appellants' October 28, 2013 amended return and accompanying IRS Form 4549B satisfy all of these requirements. Therefore, we find that appellants' October 28, 2013 amended return was filed within six months of the final federal determination date of October 7, 2013, and properly reported the federal changes to respondent. As a result, respondent had two years from October 28, 2013, to issue an NPA. However, respondent issued the NPA on March 15, 2016, which is more than two years after October 28, 2013. Thus, the NPA for the 2009 tax year is barred by the statute of limitations,

and we need not address whether there were any errors in respondent's proposed assessment for the 2009 tax year.

### HOLDINGS

1. Appellants have not established error in respondent's proposed assessment for the 2008 tax year.
2. Respondent's proposed assessment for the 2009 tax year is barred by the statute of limitations.

### DISPOSITION

Respondent's action is reversed as to the 2009 tax year.<sup>3</sup> In addition, as conceded by respondent, the accuracy-related penalty for the 2008 tax year is reduced from \$1,475.40 to \$429.56. Otherwise, respondent's action is sustained for the 2008 tax year.

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Daniel K. Cho

Administrative Law Judge

We concur:

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Richard Tay

Administrative Law Judge

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Kenneth Gast

Administrative Law Judge

Date Issued: 1/6/2021

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<sup>3</sup> Respondent's concession to abate the accuracy-related penalty for the 2009 tax year is moot because the entire NPA is barred by the statute of limitations, which includes this penalty.