

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	) OTA Case No. 21027194
	)
<b>R. MICHOVICH AND</b>	)
<b>D. MICOVIC</b>	)
_____	)

**OPINION**

Representing the Parties:

For Appellants:	R. Michovich D. Micovic
For Respondent:	Leoangelo C. Cristobal, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Michovich and D. Micovic (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$11,539.50, an accuracy-related penalty of \$2,307.90, and applicable interest, for the 2009 tax year.

Appellants waived their right to an oral hearing, so we decide this matter based on the written record.

**ISSUE**

Whether FTB's proposed assessment is barred by the statute of limitations.<sup>1</sup>

**FACTUAL FINDINGS**

1. On April 30, 2010, appellants timely and jointly filed their 2009 California Resident Income Tax Return within the automatic extension period. Appellants reported a federal adjusted gross income of \$5,000.
2. On May 10, 2010, the IRS received appellants' late-filed 2009 federal income tax return. On August 26, 2010, the IRS began examining this return.

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<sup>1</sup> On appeal, appellants have not offered any arguments specific to the additional tax, the accuracy-related penalty, or interest, so their respective merits are not disputed or at issue.

3. On March 12, 2012, the IRS made a final federal determination, which adjusted appellants' 2009 federal tax account. Specifically, the IRS increased appellants' federal adjusted gross income to \$190,821. As a result, the IRS assessed appellants additional federal income tax as well as penalties (including a late-filing penalty) and interest. Appellants did not report the adjustment to FTB.
4. On March 20, 2012, FTB received an IRS report about the final federal determination and resulting adjustments to appellants' 2009 federal tax account.
5. On December 6, 2012, FTB proposed to appellants a corresponding adjustment to their 2009 California tax account via a Notice of Proposed Assessment (NPA).
6. On February 4, 2013, FTB received appellants' timely protest of the NPA. In their protest, appellants informed FTB that they were challenging the federal late-filing penalty and interest, but did not state that they were also challenging the additional federal income tax.
7. On February 6, 2013, FTB acknowledged appellants' protest. On April 3, 2013, FTB informed appellants that it was deferring further action on their protest until appellants arrived at a final settlement with the IRS. FTB also asked appellants to report details of any adjustments made to their federal taxable income within six months of the final federal determination date. The IRS made no further adjustments to appellants' federal taxable income, and appellants did not respond to FTB's request.
8. On November 3, 2020, FTB sent appellants its position letter affirming the correctness of its NPA and requested that appellants provide any IRS documentation to the contrary. Appellants did not respond to FTB's request.
9. On December 31, 2020, FTB issued a Notice of Action (NOA) affirming the NPA.
10. This timely appeal followed.<sup>2</sup>

### DISCUSSION

In general, FTB must issue a proposed assessment within four years of the date the taxpayer files his or her California return. (R&TC, § 19057.) However, when there has been a

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<sup>2</sup> In its briefs, FTB determined that two years would have been a reasonable amount of time for it to resolve appellants' protest and thus conceded interest that had accrued from February 4, 2015 (two years after FTB received appellants' protest), through December 31, 2020 (the date of the NOA).

federal adjustment—as is the case here—special limitations periods apply. (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 910.)

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 or correction to FTB within six months after the date it becomes final. (R&TC, § 18622(a).) Per R&TC section 19059(a), if either the taxpayer or the IRS reports the change or correction within six months after the final federal determination, FTB may issue a “notice of proposed deficiency assessment” resulting from those adjustments within two years from the date the report is filed with FTB, or within one of the three periods provided in R&TC sections 19057, 19058, or 19065, whichever period expires later. Of these four alternative periods, only the three periods specified in R&TC sections 19059, 19057, and 19058 are relevant here.<sup>3</sup>

Under R&TC section 19059(a), FTB may issue an NPA within two years from the date the IRS report is filed with FTB. The IRS’s report was filed with FTB on March 20, 2012, so under this statute FTB had until March 20, 2014, to issue the NPA.

Under R&TC section 19057(a), FTB must mail an NPA to the taxpayer within four years after the day the taxpayer files a California return. Appellants filed their 2009 California return on April 30, 2010, so under this statute FTB had until April 30, 2014, to issue the NPA.

Under R&TC section 19058(a), if the taxpayer omits from reported gross income an amount exceeding 25 percent of the reported gross income, FTB may mail an NPA to the taxpayer within six years after the taxpayer files a California return. Appellants reported a federal adjusted gross income of \$5,000 on its 2009 California return (filed on April 30, 2010), but the IRS adjusted this amount to \$190,821, which results in an omitted amount of \$185,821. This omitted amount exceeds \$1,250 (i.e., 25 percent of \$5,000), so under this statute FTB had until April 30, 2016 to mail an NPA to appellants.

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<sup>3</sup> Under R&TC section 19065, FTB must mail an NPA to the taxpayer within six months after the expiration of any extended period for assessing deficiencies in the federal income tax agreed to by the taxpayer and the IRS. Here, the record does not contain evidence of any such agreed-upon extension and the parties do not assert the existence of one.

Because April 30, 2016, is the latest of all the alternative deadlines, it is the one that applies. Here, FTB issued the NPA to appellants on December 6, 2012, well before the applicable April 30, 2016 deadline.<sup>4</sup> Thus, FTB’s NPA was timely issued.

On appeal, appellants assert that the December 31, 2020 NOA—not the December 6, 2012 NPA—constitutes FTB’s assessment, and this assessment is barred by the statute of limitations because FTB did not issue the NOA within four years of the day appellants filed their California return (i.e., by April 30, 2014).

Appellants provide no authorities to support their contention that the NOA matters for the statute of limitations at issue. Rather, each of the relevant R&TC sections that provide FTB with deadlines for notifying taxpayers of liabilities resulting from federal adjustments specifically refers to a “notice of a proposed deficiency assessment” (or a minor variation thereof)—that is, an NPA. (See R&TC, §§ 19057(a), 19058(a), and 19059(a).) Thus, contrary to appellants’ assertion, the December 6, 2012 NPA is the relevant notice, not the December 31, 2020 NOA.

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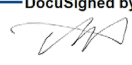
<sup>4</sup> FTB also issued the December 6, 2012 NPA well before the earlier, non-applicable deadlines of March 20, 2014, and April 30, 2014.

HOLDING

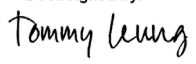
FTB’s proposed assessment is not barred by the statute of limitations.


DISPOSITION

We modify FTB’s action per FTB’s concession on appeal.<sup>5</sup> Otherwise, we sustain FTB’s action.

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Andrew Wong  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge

Date Issued: 12/27/2021

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<sup>5</sup> See footnote 2, *ante*, page 2.