OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **ELECTRONIC DATA SYSTEMS CORPORATION AND SUBSIDIARIES**	OTA Case No. 19125643

OPINION

Representing the Parties:

For Appellant:	Michael A. Jacobs, Attorney Yoni Fix, Attorney Lee Zoeller, Attorney Timothy Lee, Attorney
For Franchise Tax Board:	Jason Riley, Attorney Ellen Swain, Attorney
For Office of Tax Appeals:	Grant S. Thompson, Attorney

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Electronic Data Systems Corporation & Subsidiaries appeals respondent Franchise Tax Board's action proposing $621,286 of additional tax, plus interest, for the 1998 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges John O. Johnson, Sara A. Hosey, and Amanda Vassigh held an oral hearing for this matter in Sacramento, California, on June 14, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE[1]

Whether respondent issued its notice of proposed assessment (NPA) within the statute of limitations.

FACTUAL FINDINGS

Overview

1. For its 1998 tax year, appellant claimed California research credits of $4,718,556 and federal research credits of $76,261,692.[2]
2. The IRS examined appellant's 1998 federal tax return and ultimately disallowed 20 percent of the claimed federal research credits. The IRS determination for the 1998 tax year became final on or about August 7, 2006.[3]
3. On July 16, 2013, almost 7 years after the IRS's final determination became final, respondent issued an NPA proposing to disallow 20 percent of appellant's claimed California research credits. Following appellant's protest, respondent issued a Notice of Action affirming its NPA.
4. Appellant then filed this timely appeal, contending that respondent's NPA was untimely under R&TC section 19060(b), which allows respondent to issue an NPA up to four years from the date the IRS or a taxpayer notifies respondent of a federal correction.[4]

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[1] In its initial opening brief, appellant asserts that it was "entitled to utilize additional Enterprise Zone Credits to further reduce its tax." It did not provide any explanation or argument to support this assertion. Appellant then filed a supplemental opening brief and a reply brief that do not raise any arguments concerning enterprise zone credits. OTA also notes that appellant has not argued on appeal that respondent's proposed assessment is incorrect; it has only argued that the proposed assessment was untimely. Appellant confirmed at the prehearing conference that the sole issue on appeal is the statute of limitations issue.

[2] Internal Revenue Code (IRC) section 41 provides for federal research credits. California law modifies IRC section 41 by, among other things, only providing a credit for research conducted in California. (R&TC, §§ 23609(c)(2), 23609(h)(3).)

[3] The record includes an audit report dated April 18, 2013, that indicates a final federal determination date of August 7, 2006 (on pages five, six and seven), but also states in at least one place a final federal determination date of June 14, 2006 (on a different part of page seven). The discrepancy was raised at the hearing, but ultimately it appears to not impact the outcome of the appeal. Since it appears from the record that the June 14, 2006 date refers to the date of the IRS Form 4549-A and that the adjustments reflected in that document became final on August 7, 2006, this Opinion shall refer to August 7, 2006, as the final federal determination date.

[4] R&TC section 19060(b) applies "[i]f, after the six-month period required in Section 18622, a taxpayer or the [IRS] reports a change or correction by the [IRS] ....."

Appellant contends that, pursuant to R&TC section 18622,[5] it properly notified respondent of the federal changes and corrections on August 6, 2008. Respondent contends that appellant did not provide sufficient notice of the federal changes until December 31, 2009.

Audit History and Communications[6]

5. On or about August 5, 2003, the IRS issued a Notice of Proposed Adjustment attaching an explanation on Form 886A for appellant's 1996 to 1998 tax years (August 2003 IRS Form 886A). This document does not reflect the adjustments made in the final federal determination. It states that the IRS examined five sample research projects from 1998 out of more than 8,000 claimed projects over the three-year period (which included 4,791 claimed research projects for the 1998 tax year). It states that the IRS's primary position is that only a portion of one of the five sample projects evidenced a process of experimentation, and that, because the amount of qualified research did not exceed the base amount of qualified research expenses under IRC section 41(a)(1), there was no allowable research credit for any of the three years. Its alternative position was that appellant did not accurately compute its qualified research expenses and that its claimed expenses for the 1996 to 1998 tax years should be reduced, with claimed expenses for the 1998 tax year reduced by approximately 19 percent.

6. In a "Summary Narrative" with a last-modified date of June 16, 2003, respondent indicated that it examined sample projects to determine error percentages. However, it noted that appellant's research credits may be subject to further adjustment once the IRS finalized its examination. It further stated that respondent "has not examined the qualification of the R&D [research and development] activity in the State as this would

[5] As discussed later in this Opinion, R&TC section 18622 requires that taxpayers notify respondent of federal changes within six months of each final federal determination and that such notification "be sufficiently detailed to allow computation of the resulting California tax change" and be reported in the form and manner prescribed by respondent.

[6] As discussed further below, the resolution of this appeal turns on when appellant notified respondent of the federal changes in a manner that was "sufficiently detailed to allow computation of the resulting California tax change . . . ." (R&TC, § 18622(c); see also R&TC, § 19060(b).) Consequently, it is necessary to consider the IRS examination and appellant's communications to respondent regarding the IRS examination. According to respondent's records, the final federal determination date was August 7, 2006. While the parties dispute the date on which appellant provided adequate notice of this final federal determination to respondent, they agree that it was provided by appellant no later than December 31, 2009.

merely duplicate the work of the IRS" and ". . . [respondent] does not have the technical expertise to determine whether the R&D activities met the requirements of [IRC section] 41." Therefore, respondent stated, it would "rely on the IRS determination in making [an] additional adjustment to the California R&D."

7. On February 14, 2005, appellant informed respondent that it was planning to protest the IRS's proposed adjustments for the 1996 to 1998 tax years. Appellant indicated that it understood that the IRS had disallowed all of its claimed federal research credits.

8. On March 30, 2005, appellant provided documents to respondent indicating that the IRS intended to disallow all or nearly all the approximately $76 million in federal research credits claimed by appellant.[7]

9. The IRS issued a Form 4549-A (Income Tax Examination Changes) dated June 14, 2006, for years including appellant's 1998 tax year which shows total adjustments of ($15,241,156)[8] for appellant's 1998 tax year, lists allowed General Business Credits[9] totaling $58,444,434, and shows an increase in tax and balance due of $10,423,082.

10. On August 6, 2008, appellant provided documentation to respondent (June 2006 Documentation); however, the identification and the content of the specific documentation appellant provided on this date is not clear. The record does not include a copy of a cover letter or email with attached documents from this date showing the documents provided.[10]

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[7] The documents include the first page of appellant's protest of the federal adjustments, one page out of a 650-page federal Form 4549-A covering the 1996 to 1998 tax years that references a $114,756 adjustment to General Business Credits claimed by appellant for the 1998 tax year, a schedule showing that the IRS intended to allow this amount of General Business Credits, and the August 2003 IRS Form 886A, which proposed to disallow all of appellant's claimed research credits for the 1998 tax year. The documents did not reflect the federal changes and corrections that were ultimately reflected in the final federal determination, which reduced appellant's claimed federal research credits for the 1998 tax year by approximately 20 percent.

[8] Appellant asserts that this adjustment amount reflects the 20 percent reduction in federal research credits. The adjustments are listed as "Per RAR [revenue agent report] – Form 4549-B's" with a handwritten reference to page 4 of the 37-page document. Page 4 was not provided on appeal.

[9] Numerous types of tax credits, including the federal research credit, constitute General Business Credits. (See IRC, § 38.) The original copy of this exhibit provided on appeal was not clearly legible and, upon request, appellant provided a clearer copy in advance of the oral hearing. The clearer copy shows a handwritten notation on the general business credits line referencing page 9 of the 37-page document. Page 9 was not provided on appeal.

[10] As discussed in detail below, appellant maintains that this submission of documents to respondent on August 6, 2008, starts the running of the statute of limitations.

a. Appellant states that it provided respondent with a copy of the IRS Form 4549-A signed June 14, 2006, with supplemental schedules, "which showed that the IRS final adjustment reduced EDS's 1998 federal R&D credit by $15,243,156."[11] In support of this statement, appellant references exhibit 9, an Audit Issue Section document from respondent dated April 14, 2013 (April 2013 Audit Document), which states that "On 8/06/08, the taxpayer provided summary of RAR [Revenue Agent Report] adjustments (Attachment #1 – 5)[12] . . . with details of RAR adjustments of Form 4549-A dated 05/08/06 and 06/14/06."[13]

   i. The third page of appellant's exhibit 8 bears a date of August 6, 2008, and has a handwritten label of *Attachment 1*. It is entitled "Summary of Forms 870 and 4549A for TYE 12/6, 12/97, and 12/98." It references IRS RARs dated May 8, 2006, and June 14, 2006, and indicates that the June 14, 2006 adjustment was ($15,241,156). It further shows a previously reported RAR of ($16,237,304), RAR adjustments to be reported of ($1,273,751) with reference to a RAR dated May 8, 2006, and RAR adjustments of ($15,241,156) with reference to a RAR dated June 14, 2006. It shows total RAR adjustments to be reported of $16,514,907. It does not expressly reference appellant's claimed research credits.

   ii. The fourth page of exhibit 8 also bears a date of August 6, 2008, and contains a handwritten notation that it is *Attachment 5*. This document is entitled "[Schedule] of FF Form 5701 – By Legal Entity" and it shows various line items and amounts settled at IRS appeals. For the 1998 tax

[11] This actual amount shown on the cited exhibit is $15,241,156. Appellant's reference to an amount of $15,243,356 appears to be an immaterial typographical error.

[12] Appellant's exhibit 8 appears to reflect a portion of what was submitted on August 6, 2008. The unclear copy of Form 4549-A has a handwritten notation on it indicating it is Attachment 4, while two summaries prepared by appellant are marked as Attachment 1 and Attachment 5. Attachments 2 and 3 were not included, and it is unclear if what is provided constitutes the entirety of Attachments 1, 4, and 5. Exhibit 10, submitted to respondent by appellant in June 2009 and discussed further herein, appears to contain similar documents and includes pages marked as Attachments 1-5.

[13] The RAR dated May 8, 2006, appears to involve a $1,273,751 federal adjustment, rather than the $15,241,156 adjustment relating to the disallowance of 20 percent of appellant's federal research credits that is at issue.

years, it contains two entries that appear relevant to appellant's claimed federal research credits. It reflects "Research and [Development] Expense M1 Expense Addback" of ($15,241,156) and "R&D Expenses (Y2K projects) Allowed" of ($2,690,858).

b. According to respondent, appellant provided "excerpted pages from at least three preliminary federal determinations relating to appellant[']s 'General Business Credit' for the 1996 through 1998 tax years, including a federal Form 4549-A dated May 8, 2006." However, respondent states that many pages of the submission were illegible[14] and that appellant did not provide a complete copy of the RAR.

   i. In addition to the "Attachments" discussed above, respondent also refers to exhibit 9, specifically pages six and seven of the April 2013 Audit Document, when referencing the type of information provided by appellant at that time. Page six states in part that respondent's assessment for 1998 tax year "is primarily from the RAR adjustment per Form 4549-A dated June 14, 2006." Page seven states that appellant did not provide "complete notification" of the final federal determination until December 31, 2009. It indicates that appellant previously provided early federal adjustments including a RAR dated August 6, 2003, but that the IRS later revised these federal adjustments.[15] It further states that "[t]he earliest support RAR working papers dated 08/06/08 for RAR per Form 4549-A dated 06/14/06 . . . regarding the R&D RAR adjustment was not enough to make a determination regarding this issue." It further states that appellant did not provide complete workpapers until December 31, 2009, so the statute of limitations for assessment was extended until December 31, 2013.

[14] See footnote 9. When asked during the hearing why appellant provided the largely illegible version of the document to respondent originally, appellant's representatives indicated that they provided the version they had at some point received from respondent, and that the legible version provided leading up to the hearing was a copy they subsequently procured from appellant itself.

[15] This may refer to the August 2003 IRS Form 886A.

11. On June 4, 2009, appellant sent respondent an email stating that it was attaching four documents.[16] As relevant to the 1998 tax year, the email states that appellant was attaching a "1997-1998 VCI Amended Option 1 Tax Assessment" and "1996-1998 RAR Support." Attached to the email were documents reflecting handwritten notations of attachment numbers 1, 2, 2.1, 2.2, 3, 3.1, 3.2, 4, 4.1, 4.2 and 5. The attachments reflect the following:

    a. *Attachment 1*. This is the same attachment provided as part of the June 2006 Documentation.

    b. *Attachment 2*. This page is appellant's agreement on Form 870 to waive restrictions on assessment, dated January 8, 2004. It covers the 1996 to 1998 tax years and shows a tax increase of $4,165,971 for the 1998 tax year. It does not expressly reference appellant's claimed research credits.

    c. *Attachments 2.1 & 2.2*. These attachments consist of two pages, out of ten, of an IRS Form 4549-A signed by the IRS on December 22, 2003. For the 1998 tax year, they show a General Business Credit of $76,376,448, and a tax deficiency of $4,165,971. Next to the General Business Credit line item, there is a handwritten notation referencing page A10. However, page A10 was not provided, or, at least, was not provided in a sufficiently legible form that it can be identified as page A10. At the top, these pages have handwritten notations stating, "Agreed Issues" and "Agreed."

    d. *Attachment 3*. The heading and upper portion of this document is illegible. In the body, it appears to show tax of $1,350,415 for the 1998 tax year, but the amount is difficult to discern. The document appears to be signed and dated May 9, 2006, and reflects a Consent to Assessment and Collection.

    e. *Attachment 3.1 & 3.2*. This document is mostly illegible. It appears to be pages one and two of thirteen of an IRS Form 4549-A. Among other things, it lists a general business credit for three years, but the years and amounts listed are illegible. The second page appears to show amounts due for three tax years and reflects an illegible signature with a date of May 8, 2006. The amount due for the 1998 tax year is difficult to read, but it appears to show an amount due of approximately $1.3 million.

[16] While appellant asserts that the August 6, 2008 submission provided respondent adequate notice of the federal adjustments, it provides that in the alternative, these documents submitted to respondent on June 4, 2009, should be sufficient. Both dates are more than four years prior to the date respondent's NPA in dispute was issued.

f. *Attachment 4*. The document heading on this page is mostly illegible. The body reflects tax for the 1996, 1997 and 1998 tax years, but the tax amounts listed are illegible.

g. *Attachments 4.1, 4.2 & 5*. These are the same attachments provided as part of the June 2006 Documentation.

12. On December 31, 2009, appellant provided federal workpapers showing the final research credit adjustments for the 1996 to 1998 tax years and appellant's calculation of the California impact of federal research credit adjustments for the 1998 tax year.[17] The documentation provided included 17 pages of an IRS Form 886A, entitled Explanation of Items, that provided an explanation of the research projects examined, how appellant calculated its claimed federal research credits and the basis for the federal adjustments. This document indicates a $15,241,156 reduction in the amount of appellant's federal credit.

13. On July 2, 2010, respondent issued Audit Issue Presentation Sheet No. 6.

a. It states that, in 2003, respondent and the IRS audited appellant at the same time. It indicates that respondent determined to disallow 3.466 percent of appellant's claimed California research credits, resulting in a revised credit amount of $4,554,986. It states that, in a prior communication, respondent had stated that its adjustment "relates only to the California sourcing of the California Research Credit, therefore, any federal adjustments . . . would still also apply to the California Research Credit[] (i.e., if the federal audit disallows 10% of the job classifications, or 20 percent of the projects, or 25 percent of the costs, the California Research Credit will be adjusted using the same ratio[])."

b. It further states that, "[a]fter the IRS finished its audit of the RDC [research credit] in 2006, the taxpayer provided copies of the RAR [IRS Revenue Agent Report] adjustments dated 06/04/2009 to [respondent]."

c. It also states that, following respondent's information document request dated December 17, 2009, appellant provided workpapers "to show the Federal RDC RAR

[17] Respondent states that this communication was sufficient to adequately notify it of the federal adjustments. The parties dispute whether appellant adequately notified respondent of the adjustments prior to this date.

adjustments result in a net reduction of approximately $2 million California RDC generated during tax years 1996 to 1998." This presumably refers to appellant's December 31, 2009 submission to respondent.

d. It indicates that the IRS reduced appellant's claimed federal research credits for the 1996, 1997 and 1998 tax years by, respectively, 22 percent, 21 percent, and 20 percent. It further indicates that these percentage adjustments would be applied to the adjusted California research credit amounts determined by respondent so that, for the 1998 tax year, respondent would allow $3,643,989 of appellant's claimed research credits (i.e., 80 percent of the adjusted credit amount of $4,554,986).

14. Respondent issued its NPA on July 16, 2013, which appellant protested and respondent affirmed. (See Factual Finding #3, above.)

15. In 2014 and 2015, respondent issued news releases indicating that, subject to differences between state and federal law, it would follow on point federal determinations regarding engagement in qualified research activities but that it might need to request information to determine how to apply the IRS analysis to California research. In its 2015 news release, respondent stated that "[w]here the research projects reviewed by the IRS were substantially different from research projects conducted in California, [respondent] may need to examine California research project activities even in the same year."

DISCUSSION

R&TC section 18622(a) requires taxpayers to report federal changes or corrections to respondent within six months of the final federal determination of the changes or corrections. To provide adequate notice, ". . . a taxpayer must report the substance of the change, correction, or renegotiation, not merely the fact that a change was made." (*Appeal of Market Lessors, Inc.* (68-SBE-038) 1968 WL 1667.)

R&TC section 18622(c) requires that the taxpayer report the federal changes or corrections in a manner that is "sufficiently detailed to allow computation of the resulting California tax change and shall be reported in the form and manner as prescribed by [respondent]."[18] (See *Appeal of Valenti*, 2021-OTA-093P.) California Code of Regulations,

[18] This statutory provision was added in 1999, but it is effective for federal determinations that become final on or after January 1, 2000, and therefore applies here. (See FTB Notice 99-9, 1999 WL 1241076, at p. *2.)

tit. 18, (Regulation) section 19059(a) provides that such notification shall be made by mailing to respondent "the original or a copy of the final determination . . . as well as any other data upon which such final determination . . . is claimed."[19]

R&TC section 19060(b) provides that, where the taxpayer or IRS reports a change or correction to respondent after the six-month period required by R&TC section 18622, respondent may issue an NPA "resulting from the adjustment . . . within four years from the date the taxpayer or the [IRS] notifies [respondent] of that change or correction ....."[20]

Here, appellant did not report the federal changes or corrections within six months of the final federal determination. However, the parties agree that appellant ultimately provided adequate notice of the federal changes or corrections. As result, under R&TC section 19060(b), respondent had four years from the date that appellant or the IRS notified it of the federal change or correction to issue its NPA. The parties dispute whether appellant provided adequate notice of the federal changes or corrections prior to December 31, 2009, and, more specifically, whether appellant provided sufficient notice on a date that was early enough to render respondent's NPA untimely under R&TC section 19060(b).

Respondent issued its NPA on July 16, 2013. Therefore, to show that the NPA was untimely, appellant must show that it or the IRS notified respondent of the federal changes or corrections prior to July 16, 2009 (i.e., four years prior to the date of the NPA). There is no evidence or argument that the IRS notified respondent of the federal changes or corrections prior to this date. Accordingly, the question becomes whether appellant notified respondent of the federal changes or corrections prior to this date and did so in a manner that was "sufficiently detailed to allow computation of the resulting California tax change ....." under R&TC section 18622(c).

Appellant provided respondent with information about the federal examination on February 14, 2005, and March 30, 2005. At this time, the IRS was proposing to disallow all or nearly all of appellant's claimed federal research credits. However, the IRS ultimately allowed

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[19] It further provides that such notification must be sent to "Franchise Tax Board, Audit Section, P.O. Box 1673, Sacramento, CA 95812-1673, Attn: RAR/VOL."

[20] If a taxpayer fails to notify respondent of the federal changes, then respondent may issue the NPA at any time. (R&TC, § 19060(a); *Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 912.) The specific statute of limitations set forth in R&TC section 19060 overrides the general statute of limitations set forth in R&TC section 19057. (*Ordlock v. Franchise Tax Bd.*, *supra*; *Appeal of Valenti*, *supra*.)

approximately 80 percent of appellant's claimed federal research credits. These communications during 2005 could not have informed respondent of the federal changes or corrections, because, at that time, the IRS had not finalized its changes and corrections.

Contrary to appellant's contention, the Form 886A in March 2005 is not "virtually identical" to the Form 886A it provided on December 31, 2009, which respondent used to determine its proposed assessment. The Form 886A appellant provided in March 2005 proposed to disallow all of appellant's federal research credits. In contrast, the Form 886A provided on December 31, 2009, proposed to disallow only 20 percent of appellant's claimed federal research credits. The earlier Form 886A could not have provided respondent with notice of the IRS changes reflected in the final federal determination because the earlier Form 886A did not reflect the final changes of the IRS.

Appellant also communicated with respondent regarding the federal examination on August 6, 2008. The specific documentation provided is not clear. In support of appellant's position that it provided sufficiently detailed notice of the IRS changes or corrections in this August 6, 2008 communication, appellant points to language found on page one of the April 2013 Audit Document stating that "[o]n 8/06/08, the taxpayer provided summary of RAR adjustments (Attachment #1 – 5) . . . with details of RAR adjustments of Form 4549-A dated 05/08/06 and 06/14/06."[21] However, page seven of this same document states that "[t]he earliest support RAR working papers dated 08/06/08 for RAR per Form 4549-A dated 06/14/06 . . . regarding the R&D RAR adjustment was not enough to make a determination regarding this issue[,]" and that appellant did not provide the complete workpapers until December 31, 2009. Accordingly, it cannot be reasonably inferred from the language appellant quotes that the information provided by appellant on August 6, 2008, was sufficiently detailed for respondent to calculate California adjustments when this same document indicates that the information provided was not sufficient to calculate the California adjustments.

Respondent indicates that, on August 6, 2008, appellant provided the June 2006 Documentation. However, the June 2006 Documentation also does not demonstrate that appellant provided respondent with sufficient documentation to determine California adjustments on August 6, 2008. Much of the documentation is illegible, and it is unclear in the record exactly

[21] It appears that the 20 percent reduction in appellant's federal research credits was made in the June 14, 2006 RAR adjustments rather than in the May 8, 2006 adjustments.

what documents were provided at this time. While appellant describes the four pages as the "IRS Form 4549-A signed June 14, 2006[,] with August 6, 2008 schedules[,]" it appears to include only two out of the form's 37 pages.

Appellant argues that this documentation showed that the IRS disallowed 20 percent of its federal research credits and, since respondent determined to disallow the same percentage of California credits, contends that the documentation provided sufficiently detailed notice for respondent to make California adjustments. In support, appellant notes that, on pages three and four, the documentation refers to $15,241,156 in federal adjustments. This amount represents approximately 20 percent of appellant's claimed federal research credits. Appellant argues that this documentation "clearly indicate[d]" to respondent that the IRS reduced appellant's federal research credits by 20 percent and that this provided sufficient detail for respondent to calculate its California adjustments.

The incomplete documentation provided by appellant in August 2008 did not provide sufficient detail for respondent to calculate the California adjustments. Much of it is illegible, and it provides no details as to the basis for the adjustments. For example, the California research credit is only allowed for California research activities, and the documentation appellant provided on those dates did not show whether the adjustments were related to research conducted in California. (R&TC, § 23609(c)(2).) Also, the documentation provided did not satisfy the requirement of Regulation section 19059(a) that appellant mail to respondent "the original or a copy of the final determination . . . as well as any other data upon which such final determination . . . is claimed."

Appellant also submitted documentation to respondent on June 4, 2009. However, it is not entirely clear what documents appellant provided. Appellant provides an email from appellant to respondent, dated June 4, 2009, stating that it was attaching four documents, but it does not appear to match the exhibits that were provided on appeal.[22]

It appears that the documents appellant provided to respondent on June 4, 2009, included the June 2006 Documentation that appellant provided on August 6, 2008. As noted previously, this documentation did not provide sufficient detail to calculate the California adjustments.

According to the exhibits provided by appellant on appeal, the documents appellant

[22] For example, the email references a 1997-1998 VCI Amended Option 1 Tax Assessment that either was not provided to respondent or was not included in the documents provided on appeal to evidence what appellant provided to respondent.

provided to respondent on June 4, 2009, also included seven pages that may not have been provided on August 6, 2008. These seven new pages are notated as attachments 2, 2.1, 2.2, 3, 3.1, 3.2, and 4. Attachments 2, 2.1, and 2.2 were signed on December 22, 2003. At that time, the IRS was proposing to disallow all or nearly all of appellant's research credits, so these documents do not reflect the changes or corrections that were ultimately reflected in the final federal determination (which allowed approximately 80 percent of appellant's claimed federal research credits for the 1998 tax year). Attachments 3, 3.1, and 3.2 are only partially legible, and the legible portions of the documents do not contain sufficient information for respondent to calculate appellant's California tax. Attachment 4 lists an illegible amount of additional tax for the 1998 tax year and provides no information about appellant's claimed research credits. Even if the additional federal tax amount were legible, it would not provide sufficient information for respondent to calculate appellant's California tax. Based on the foregoing, we find that appellant has not demonstrated that the documents it provided to respondent on June 4, 2009, contained sufficient detail for respondent to compute the amount of California tax. In addition, the documentation did not satisfy the requirement of Regulation section 19059(a) that appellant mail to respondent "the original or a copy of the final determination . . . as well as any other data upon which such final determination . . . is claimed."

There is no evidence that appellant provided sufficient documentation to respondent to calculate appellant's California tax on any other dates more than four years prior to the July 16, 2013 date of respondent's NPA. In addition, appellant has not shown that, more than four years prior to respondent's NPA, appellant satisfied the requirement of Regulation section 19059(a) that it mail to respondent "the original or a copy of the final determination . . . as well as any other data upon which such final determination . . . is claimed." The record reflects that appellant did not provide sufficient documentation until December 31, 2009, and the NPA was issued on July 16, 2013, which is less than four years subsequent. Accordingly, appellant has not shown that respondent's NPA was untimely.

Appellant relies heavily on the fact that respondent ultimately determined to reduce its California research credits by the same percentage that the IRS reduced appellant's federal research credits. Appellant argues that, because respondent ultimately determined to reduce appellant's California research credits by this same percentage, the only information respondent needed to determine the appropriate California adjustments was the percentage of federal

research credits disallowed by the IRS. However, the fact respondent ultimately chose to apply the same 20 percent reduction as the IRS does not show that the percentage by which the IRS reduced appellant's federal credits is sufficient information for respondent to calculate appellant's California tax. An IRS adjustment of a multistate corporation's federal research credits may reflect adjustments to research expenses for research activities outside of California, which would not be eligible for the California credit. So, for example, a 20 percent federal reduction might mean that all of the disallowed credit related to California research, that none of the disallowed credit related to California research, or something in between. To determine the amount of California tax resulting from the federal adjustments, notification of the federal adjustments must show the details of the adjustments and the basis of the adjustments.

Here, it appears that appellant may have provided respondent with the overall federal tax effect of the federal changes such as the amount of increased federal tax and the percentage of federal research credits disallowed (or information from which the percentage could be calculated). But the record does not show that, prior to December 31, 2009, appellant provided the IRS's explanation of the basis of the federal changes that were reflected in the final federal determination.

Also, as previously noted, R&TC section 18622(c) requires that notice of a federal change must be made "in the form and manner prescribed by [respondent]," and Regulation section 19059 requires that taxpayers mail to respondent "the original or a copy of the final determination . . . as well as any other data upon which such final determination . . . is claimed." Therefore, even if documents showing a 20 percent reduction in federal credits were sufficiently detailed to calculate the California tax (which is not the case), such documents would not provide sufficient notice unless they consisted of "the original or a copy of the final determination" as well as supporting data for the final determination.

Appellant argues that changes in respondent's audit personnel contributed to or caused delay in respondent's issuance of the NPA. However, even if changes in audit personnel contributed to a delay in issuance of the NPA, such personnel changes or any resulting delay do not change the applicable statute of limitations, and respondent's NPA was timely under the statute of limitations.

Appellant also points to respondent's news releases indicating that respondent would follow federal determinations regarding engagement in qualified research activities, but that

respondent may need to request information to determine how to apply the IRS analysis to California research. Appellant argues that these news releases show that it was simple for respondent to follow the federal adjustments.

However, respondent's news releases do not change the applicable statute of limitations or the California statutory requirements for calculating whether a taxpayer is eligible for California research credits. As noted previously, among other differences between California research credits and federal research credits, California only allows research credits for research conducted in California. Moreover, the news releases note that there are differences between California and federal law and that the respondent may need information from the taxpayer to determine how to apply federal changes. The news releases do not show that, prior to December 31, 2009, appellant provided sufficiently detailed information for respondent to compute the amount of California research credit or that appellant satisfied the requirements of Regulation section 19059(a).

Similarly, appellant points to an audit Summary Narrative, updated in 2003, that indicated that respondent would rely on the IRS in making additional adjustments to appellant's California research credit. It is uncontested that respondent did ultimately adjust its proposed determination based on the federal research results. The fact that respondent stated its intent to do so in 2003 does not demonstrate that appellant notified respondent of the federal changes or corrections with sufficient detail to calculate appellant's California tax on a date that would cause respondent's NPA to be untimely.

HOLDING

Respondent issued its NPA within the statute of limitations.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Sara A Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

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

Date Issued: 9/20/2023