

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

STEVEN J. GOLDMAN et al.,
Plaintiffs and Appellants,

v.

CALIFORNIA FRANCHISE TAX
BOARD,
Defendant and Respondent.

A128985
(Alameda County
Super. Ct. No. RG09441003)

ORDER MODIFYING OPINION AND
DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

The petition for rehearing is denied.

It is ordered that the opinion filed herein on January 23, 2012, be modified as follows:

1. On page 3, line 11 of the first paragraph, the sentence beginning “The Goldmans stated the increased taxable income . . .” shall be modified to read:

“In their explanation that accompanied the return, the Goldmans stated the return was amended in accordance with the VCI and that the increased taxable income was due to a change in their federal adjusted gross income reported on line 1b of their state income tax return.”

2. On page 10, line 6 of the first paragraph, the sentence “The filing of an amended return and payment . . .” shall be modified to begin with the word “But” and shall be preceded with the additional sentence “Most often the self-assessed taxes become the taxes due because the return is not audited or questioned by the FTB”, so that it reads:

“Most often the self-assessed taxes become the taxes due because the return is not audited or questioned by the FTB. But the filing of an amended return and payment on account of taxes do not have the operative effect under the

Revenue and Taxation Code that the Goldmans seek to ascribe to them under their interpretation of section 18622.”

3. On page 10, line 9 of the first paragraph, the word “solely” shall be inserted between the words “turn on” so that the sentence reads:

“Their construction makes taxes payable turn solely on the taxpayer’s self-assessment when filing an amended return or making deposits on account of taxes owed rather than the results of a federal audit and a subsequent determination by the FTB.”

There is no change in the judgment.

Pollak, Acting P.J.