

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010823
)
SAMANTHA FERNANDEZ) Date Issued: June 18, 2018
)
)
)
_____)

OPINION

Representing the Parties:

For Appellant: Samantha Fernandez, Taxpayer

For Respondent: Freddie C. Cauton, Legal Assistant

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Samantha Fernandez (appellant) appeals an action taken by the Franchise Tax Board (FTB or respondent) in denying appellant’s protest of a proposed assessment of \$496 in additional tax, plus accrued interest, for the 2013 tax year.

ISSUE

Has appellant established that she is not liable for the additional tax proposed to be assessed by FTB based upon a final federal determination?

FACTUAL FINDINGS

1. On March 21, 2014, appellant timely filed a California Resident Income Tax Return, Form 540 (tax return) for 2013. In that return, appellant reported California taxable income of \$27,136.
2. The Internal Revenue Service (IRS) subsequently obtained information that appellant failed to report \$19,699 of income reported to her on federal Form 1099-MISC (Miscellaneous Income) as nonemployee compensation paid to her by “John Solo Inc.”

¹ Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation Code.

3. After adjusting for an increased self-employment tax deduction in the amount of \$1,392, the IRS determined that appellant's federal taxable income should be increased by \$18,307, from \$21,497 to \$39,804. The IRS assessed tax on the unreported income, as determined, on November 9, 2015.
4. Appellant subsequently filed an amended federal tax return (Form 1040X) with the IRS dated May 10, 2016.
5. On July 18, 2016, the IRS accepted the amended income information as reported by appellant on the Form 1040X. The IRS reduced appellant's federal taxable income by \$9,602, from \$39,804 (as initially determined by the IRS) to \$30,202 (as reported by appellant on her Form 1040X).
6. On November 15, 2016, FTB issued a Notice of Proposed Assessment (NPA), which proposed to assess additional tax of \$1,323.84, plus interest, based on increasing appellant's California taxable income by \$18,673, from \$27,136 to \$45,809.²
7. By letter dated January 12, 2017, appellant protested the NPA on the basis that her federal tax liability was already paid to the IRS. In addition, appellant submitted a copy of her amended federal tax return, and filed an amended state tax return (California Form 540X) reporting income adjustments consistent with her amended federal return.
8. On her amended state tax return, appellant self-reported additional state income tax due to FTB in the amount of \$496. Appellant left blank the line to report interest due.
9. By Notice of Action (NOA) dated August 4, 2017, FTB accepted appellant's amended state tax return as filed, and reduced the proposed tax assessment to \$496, as self-reported by appellant. The amended state income information reported by appellant, and accepted by FTB, reduced appellant's taxable income by \$9,968, from \$45,809 to \$35,841. The adjustment in the NOA brings the state correction into conformity with the federal correction to taxable income of \$9,602.
10. By letter dated August 8, 2017, appellant timely appealed the NOA on the basis that the \$2,611 federal tax liability that she reported on her amended federal tax return was paid in full to the IRS in three installments: (1) \$730 on April 11, 2016, when the IRS applied her 2015 federal tax refund to pay the 2013 federal tax liability; (2) \$938 on May 2, 2016,

² This amount included the \$18,307 in additional income initially picked up by the IRS, and a \$366 reduction in appellant's itemized deductions on account of the increase in appellant's adjusted gross income.

when the IRS seized her state tax refund issued by FTB, and (3) the balance, \$943, by check dated May 16, 2016.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (§§ 17071; Int. Rev. Code, § 61(a).) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke*, 80-SBE-059, May 21, 1980; *Appeal of J. Walshe and M. Walshe*, 75-SBE-073, Oct. 20, 1975.)³ If the IRS makes a change or correction to any item of gross income or deduction (federal change), the taxpayer must report the federal change to the FTB within six months after the date of each final federal determination related thereto, and shall concede the accuracy of the final federal determination or state wherein it is erroneous. (§ 18622(a).) An NPA issued by FTB based on such a final federal determination is presumed correct, and the taxpayer bears the burden of proving error. (*Appeal of S. Brockett and H. Brockett*, 86-SBE-109, Jun. 18, 1986.)

Here, appellant does not dispute that she received the income assessed, or claim that the federal determination is erroneous. Further, there is no evidence to suggest that FTB's proposed assessment, which is based on the federal determination, is incorrect. To the contrary, it appears that appellant agrees with the amount of the assessment because appellant self-reported the amount at issue on an amended state tax return (Form 540X) that appellant signed and filed with FTB. The disputed proposed tax assessment of \$496 is the amount of tax that appellant reported she owes to FTB on her own amended state tax return. FTB accepted appellant's amended return as filed. Therefore, we have no basis to make any adjustments to the liability.

Appellant contends that she paid the liability at issue. Unfortunately, it appears appellant is confusing the IRS with FTB, which are two separate entities. The IRS collects federal income taxes, such as those reported on appellant's amended federal tax return, the federal Form 1040X. FTB, on the other hand, collects state income taxes, such as those reported on appellant's amended state income tax return, the California Form 540X. These are two separate entities, and two separate taxes. Appellant provided no evidence, nor does she contend, that she paid the \$496 in state income tax to FTB.

³ Pursuant California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are viewable on BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

Therefore, based on the evidence presented to us, appellant has not provided a basis upon which we can make any adjustments to the amount of the proposed assessment.

HOLDING

Appellant failed to establish error in respondent's proposed assessment or in the final federal determination upon which it is based.


DISPOSITION


Respondent's action is sustained.

DocuSigned by:

3CADA62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A6CA514E7...
Sara A. Hosey
Administrative Law Judge

DocuSigned by:

FC572D5881AE41B...
Grant S. Thompson
Administrative Law Judge