

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18010897  
 )  
**LINDA SEGUNDO** ) Date Issued: April 30, 2018  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Richard Brush, Tax Appeals Assistance Program  
For Respondent: Freddie C. Cauton, Legal Assistant

D. BRAMHALL, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Linda Segundo (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in assessing additional tax amount of \$1,283.00<sup>2</sup> for the 2012 tax year.

Appellant waived her right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUES**

- 1. Did respondent err in assessing additional income tax?
- 2. Did respondent err in assessing additional tax on a premature retirement plan?

**FACTUAL FINDINGS**

- 1. For tax year 2012, appellant filed a California Resident Income Tax Return, Form 540EZ, reporting wages and total income of \$49,886.00 and tax of \$86.00. After subtracting the nonrefundable renter's credit of \$120.00 the tax liability reported was -0-. After applying

<sup>1</sup> Unless otherwise indicated, all section references are to sections of the California Revenue and Taxation Code.

<sup>2</sup> Appellant is appealing FTB's assessment of additional tax in the amount of \$1,283, which includes \$888.00 of regular tax on additional income of \$15,895, and \$395.00 of premature distribution tax.

a California withholding credit of \$2,038.00, an overpayment of \$2,038.00 was reported and refunded.

2. Subsequently, under authorization of section 6103(d) of the Internal Revenue Code (IRC), FTB received information from the Internal Revenue Service (IRS) that showed appellant had underreported her income on her 2012 federal return. Specifically, the IRS made adjustments to the federal return to add previously unreported pension/annuity income of \$15,895.00. In addition, the IRS assessed a premature distribution tax of \$1,590.00.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that applied the IRS income adjustments to appellant's 2012 California tax return. The NPA reflected a revised taxable income of \$58,099.00 and a proposed additional tax of \$1,283.00. The additional tax included a premature distribution tax of \$397.00.
4. Appellant timely protested the NPA and therein asserted that her return properly reported all of her earnings.
5. In reply, the FTB provided appellant with copies of the information available to it upon which its proposed assessment was based showing details of the IRS adjustments for tax year 2012.
6. FTB did not receive any reply to its post-NPA letter and issued a Notice of Action (NOA) affirming its NPA.
7. In response, this timely appeal was filed.

### DISCUSSION

#### Issue 1 - Did respondent err in assessing additional regular tax?

Section 18622 requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or to 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 FTB's determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Wing E. and Fay D. Lew*, 78-SBE-073, Aug. 15, 1978; *Appeal of Donald G. and Franceen Webb*, 75-SBE-061, Aug. 19, 1975.) Further, an FTB determination is presumed correct, and the burden of proof is on the taxpayer.

*(Appeal of Robert B. and Patricia Silver, 82-SBE-252, Oct. 14, 1982; Appeal of Pearl R. Blattenberger, 52-SBE-002, March 27, 1952.)*

The IRS provided FTB with a CP2000 audit report that shows adjustments were made to appellant's 2012 federal tax return for unreported pension/annuity income of \$15,895.00 and a premature distribution tax of \$1,590.00. Because these adjustments also apply for state tax purposes, FTB issued the NPA to make these adjustments to appellant's California taxable income.

The California Personal Income Tax Law is largely based on the federal IRC. Therefore, determinations by the IRS on the issues that are treated the same under state and federal law will apply for California tax purposes. (*Calhoun v. FTB* (1978) 20 Cal.3d 881; *Holmes v. McColgan* (1941) 17 Cal.2d 426.)

In this specific matter, California law conforms to federal law as to the taxation of pension/annuity income. Section 17085 conforms to IRC section 72, with some modifications not applicable here, and requires inclusion in income of gross amounts received from annuities, including retirement plan distributions.

In order to verify the amount of the federal adjusted gross income as determined by the IRS, FTB obtained a copy of appellant's federal account transcript from the IRS. The transcript reflects that appellant's 2012 federal adjusted gross income (as revised) was \$65,781.00 and her revised federal taxable income was \$45,681.00. The transcript also reflects that on October 27, 2014, the IRS assessed additional tax of \$3,975.00 for 2012, which assessment became final and was fully paid.

Appellant has stated that she did not omit any income from her return, but she has offered no evidence to show error in the above federal adjustments or in the FTB's application of those adjustments to appellant's 2012 California income and tax liability.

Issue 2 - Did respondent err in assessing a premature distribution tax?

Early distributions from qualified retirement plans are governed by IRC section 72. Although section 17085 conforms to federal law, it also modifies IRC section 72 with respect to a premature distribution tax rate. IRC section 72(t)(1) provides that if a taxpayer receives an amount from a qualified retirement plan, the taxpayer's federal tax shall be increased by an amount equal to 10 percent of the portion that is includible in gross income. For California

purposes, section 17085(c)(1) reduces the percentage to 2.5 percent of the includible amount received.

FTB obtained appellant's wage and income transcript from the IRS. The wage and income transcript reflects that the pension distribution of \$15,895.00 received in 2012 from Northern Trust was an early distribution with no known exceptions to the additional tax. Consequently, FTB properly imposed an additional 2.5% tax on the early distribution in the amount of \$397.00.

Exceptions to the premature distribution penalty are provided in IRC section 72, and conformed to by California in section 17085. Appellant has argued for the potential application of two such exceptions. First, that the distribution was made pursuant to a qualified domestic relations order.<sup>3</sup> This exception addresses circumstances where a qualified IRC section 401(k) plan is divided between spouses pursuant to a divorce settlement. Appellant argues the provision should be applied due to the needs of an adult, divorced child and her grandchildren. The exception clearly does not apply given the facts of this case.

The second exception addressed by appellant deals with distributions from an IRA for qualified higher education expenses.<sup>4</sup> Appellant argues that this exception applies due to the potential future educational needs of a special needs grandchild. The exception applies to certain expenses incurred in the year of withdrawal. Therefore, premature withdrawals for potential future needs do not qualify for the exception.

While appellant asserted that all her earnings for 2012 were properly reported, appellant has offered no evidence to rebut the FTB's assessment and legal position as to the applicability of the additional tax on an early distribution. Further, appellant has not documented any applicable exception.

### HOLDINGS

1. Appellant failed to establish error on the part of FTB in assessing additional tax based on appellant's receipt of an early retirement/pension plan distribution in 2012.
2. Appellant failed to establish error on the part of FTB in assessing an early distribution tax on the 2012 distribution.


---

<sup>3</sup> IRC § 72(t)(2)(C).

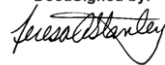
<sup>4</sup> IRC § 72(t)(2)(E).

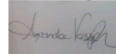
DISPOSITION

Respondent's action in assessing additional tax is sustained in full.

DocuSigned by:  
  
CA2E033C0906484  
\_\_\_\_\_  
Douglas Bramhall  
Administrative Law Judge

We concur:

DocuSigned by:  
  
0C66C6AC66A44D...  
\_\_\_\_\_  
Teresa A. Stanley  
Administrative Law Judge

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