

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010990
)
MICHAEL BAKKERS) Date Issued: April 2, 2018
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OPINION

Representing the Parties:

For Appellant: Michael Bakkers

For Respondent: Kenneth A. Davis, Tax Counsel IV

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Michael Bakkers (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$1,890, plus interest, for the 2011 tax year.

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

ISSUE

Has appellant shown error in respondent's proposed assessment, which is based on a federal determination?

FACTUAL FINDINGS

1. Appellant received a 1099-MISC for the 2011 tax year reporting taxable income received by him from Reunion Mortgage Inc. in the amount of \$45,911.14.
2. Appellant filed a timely California tax return for the 2011 tax year. Appellant reported federal adjusted gross income (AGI) of \$4,684, and remitted with his return a reported tax due amount of \$18.
3. Respondent subsequently received notice of federal adjustments made to appellant's 2011 tax liability in the form of a CP2000 Data Sheet. The federal adjustments increased

appellant's federal AGI from \$4,684 to \$50,595 based on \$45,911 of unreported income from Reunion Mortgage Inc.

4. Respondent then issued a Notice of Proposed Assessment (NPA) which, based on the \$45,911 of additional income reported in the federal CP2000 Data Sheet, proposed an additional tax of \$1,890 and interest thereon.
5. Appellant protested the NPA. Respondent issued a letter in reply, and then confirmed its position in the NPA with a Notice of Action. This timely appeal followed.

DISCUSSION

Issue - Has appellant shown error in respondent's proposed assessment, which is based on a federal determination?

R&TC section 18622, subdivision (a), provides that taxpayers shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency assessment based on a federal audit report is presumptively correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal. App.2d 509; *Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986.)

Here, respondent has proposed an assessment of additional tax based on an increase in appellant's federal AGI as reported in a notice of federal determination. The federal adjustment is based on income not included in appellant's return, which was reported in a 1099-MISC issued to appellant for the year at issue. Appellant has the burden of proving error in respondent's proposed assessment, or the federal adjustment upon which it is based. Appellant asserts on appeal that the 1099-MISC erroneously attributed the \$45,911 of income at issue to him personally, rather than to his Schedule C business, The Southwest Credit Company (SCC). Appellant contends that he attempted to have the 1099-MISC revised to list SCC as the recipient of the income instead of him, but that the attempt failed due to the issuing company, Reunion Mortgage Inc., "shut[ting] their doors" in February 2012.

We find appellant's assertions on appeal unconvincing for several reasons.

First, the email provided by appellant as proof that Reunion Mortgage Inc. was closing its business does not state that it was ending its business in February 2012, but instead states that it was shifting its focus from wholesale business to retail and other financial services. Accordingly, the lack of a revised 1099-MISC was not due to impossibility, as claimed by

appellant, because the issuing company was still in business.

Second, although appellant contends that the unreported income at issue should have been attributed to his Schedule C business (SCC) instead of him personally, he did not report this income on his Schedule C for SCC. Because the income of SCC is reportable by appellant, the income reported on the 1099-MISC is includable in appellant's income regardless of whether the 1099-MISC was issued to SCC or appellant. Here, however, the 1099-MISC income at issue was not included in *either* appellant's or SCC's income.

Third, appellant has not provided any evidence, outside of his assertions on appeal and a letter allegedly sent to the payor in January 2012 requesting a revised 1099-MISC to be issued, to show that the income is actually attributable to SCC rather than him. To the contrary, the 1099-MISC that was issued and was not revised reflects appellant as the recipient of the income.

Lastly, the federal adjustment which imposed additional tax based on the unreported income has not been subsequently revised. Accordingly, appellant has not shown error in the federal adjustment, and he has not shown error in respondent's proposed assessment, which is based on that federal adjustment.

HOLDING

Appellant has not shown error in respondent's proposed assessment or the federal determination upon which it is based.

DISPOSITION

Respondent's proposed assessment for the 2011 tax year is sustained.



John O. Johnson
Administrative Law Judge

We concur:



Jeffrey G. Angeja
Administrative Law Judge



Michael F. Geary
Administrative Law Judge