

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011000
)
MEERAN KIM) Date Issued: March 15, 2018
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_____)

OPINION

Representing the Parties:

For Appellant: Meeran Kim
For Respondent: Rachel Abston, Senior Legal Analyst

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Meeran Kim (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on a proposed assessment of additional tax in the amount of \$859 for the 2013 tax year.

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

ISSUE

Whether appellant has demonstrated error in the proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely 2013 California personal income tax return. On the return, appellant reported federal adjusted gross income (AGI) of \$69,866.00, less the standard

¹Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code. Section 19045 states that taxpayers have 30 days to appeal FTB’s action upon taxpayer’s protest to the board (Board of Equalization). Commencing on July 1, 2017, Section 20, subdivision (b) was amended to read, “Unless the context requires otherwise, as used in this code or any other code, ‘board’ with respect to an appeal, means the Office of Tax Appeals.”

- deduction of \$7,812, for a taxable income of \$62,054.00 and tax of \$2,023.00. After subtracting exemption credits of \$1,084.00, nonrefundable Child and Dependent Care Expenses Credit of \$61.00 and renter's credit of \$120.00, appellant reported a total tax liability of \$758.00. After applying withholding credit of \$3,614.00, appellant reported an overpayment of \$2,856.00, which FTB refunded to appellant on March 6, 2014.
2. Subsequently, under section 6103(d) of the Internal Revenue Code (IRC), FTB received federal information that showed that the Internal Revenue Service (IRS) adjusted appellant's federal return for unreported forgiveness of debt income of \$8,651.00. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) that applied the adjustment to appellant's California taxable income, denied the nonrefundable renter's credit (because appellant's resulting California AGI exceeded the income allowable to claim that credit (Rev. & Tax. Code, § 17053.5)), and revised appellant's Child and Dependent Care Credit to the maximum amount allowed based on appellant's revised AGI (Rev. & Tax. Code, § 17052.6). The NPA proposed additional tax of \$859.00, plus applicable interest.
 3. Appellant submitted a written protest to FTB asserting that appellant had not underreported its income or overstated its deductions for the 2013 tax year. Appellant asserted that the 2013 tax return was properly filed.
 4. In response, FTB provided a copy of the federal information detailing the IRS adjustments. FTB stated that the federal information did not show that the IRS cancelled or reduced its assessment, and that its assessment was deemed correct. FTB also stated that if the IRS did cancel or reduce its assessment, appellant should provide a copy to FTB for consideration. After receiving no response from appellant, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Barbara P. Hutchinson*, 82-SBE-

121, June 29, 1982.)³ Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof with respect to an assessment based on a federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Generally, California conforms to section 61 of the IRC. (See Rev. & Tax. Code, § 17024.5.) Here, respondent properly assessed additional tax based upon a federal adjustment increasing appellant’s income pursuant to section 61 of the IRC. Appellant was asked to provide evidence to show error in respondent’s determination; however, appellant has not presented any argument or evidence to show error in the federal adjustment or respondent’s determination based on the federal adjustment.

Therefore, we conclude that appellant has not shown error in respondent’s determination or the federal adjustment on which it is based.

HOLDING

Appellant has not shown error in respondent’s determination or the federal adjustment on which it is based.

DISPOSITION

Respondent’s action is sustained.

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Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

³ Board of Equalization cases are generally available for viewing on the Board’s website (<http://www.boe.ca.gov/legal/legalopcont.htm>).

We concur:

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Grant S. Thompson
Administrative Law Judge

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Tommy Leung
Administrative Law Judge