OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18011309
	)	
FABRICIO MUNDO AND	)	Date Issued: August 6, 2018
	)	
MICHELLE R. MUNDO	)	
	)	

OPINION

Representing the Parties:

For Appellants: Fabricio Mundo & Michelle R. Mundo

For Respondent: Freddie C. Cauton, Legal Assistant

For Office of Tax Appeals: Sheriene Anne Ridenour, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,[1] Fabricio Mundo and Michelle R. Mundo (appellants) appeal an action by the Franchise Tax Board (respondent) in proposing an assessment of $1,422 in additional tax, plus interest, for the 2012 tax year.

Appellants waived their right to an oral hearing, and therefore this matter is decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellants filed a timely 2012 joint California income tax return (Form 540), claiming itemized deductions of $15,500.

[1] All further statutory references are to "Sections" of the Revenue and Taxation Code unless otherwise stated.

2. Subsequently, respondent received information from the Internal Revenue Service (IRS) in the form of a CP2000 Data Sheet indicating that the IRS made adjustments to appellants' 2012 federal return. As applicable to this appeal, the CP2000 Data Sheet indicated that the IRS allowed a self-employment tax deduction of $1,141, made an adjustment for $16,158 in unreported nonemployee compensation, and disallowed $121 in claimed miscellaneous deductions. The IRS increased appellants' federal adjusted gross income as a result of these adjustments.
3. Based on the information provided by the IRS, respondent made corresponding adjustments to appellants' California tax account to the extent applicable, and issued a Notice of Proposed Assessment (NPA). The NPA increased appellant's taxable income by $15,287,[2] from $116,095 to $131,382. The NPA proposed additional tax of $1,422, plus applicable interest.
4. Appellants timely protested the NPA, indicating that the accountant who prepared appellants' 2012 tax returns had passed away. Appellants claimed that they were blindsided by the error as they have never had problems in the past with their tax returns. Appellants requested an opportunity to settle the liability for a lesser amount.
5. Respondent responded by letter stating that the NPA amount due was based on information that respondent received from the IRS. Respondent requested that, if the IRS cancelled or revised its adjustment, appellants should provide respondent with a copy of the revised IRS report or additional information to support appellants' position.[3]
6. When appellants did not provide further information, respondent issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

Section 18622(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 the taxpayer bears the burden of

[2] The increase in taxable income was calculated based on the addition of $16,158 (unreported nonemployee compensation) + $121 (disallowed miscellaneous deduction) - $992 (self-employment tax adjustment).

[3] Respondent also provided appellants with information regarding its Offer in Compromise program. If, after the decision in this appeal becomes final, appellants are experiencing difficulties in paying their liability, appellants may contact respondent to determine whether they are eligible to participate in the Offer in Compromise program or whether they can enter into an installment payment agreement with respondent.

proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986;[4] *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. Section 17071 incorporates Internal Revenue Code section 61, which defines "gross income" as including "all income from whatever source derived." Income tax deductions are a matter of legislative grace and a taxpayer who claims a deduction has the burden of proving by evidence that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)

Appellants assert that they disagree with the proposed assessment. However, appellants have provided no evidence or argument demonstrating error in the proposed assessment of additional tax for the 2012 tax year. Instead, appellants argue that they are "unable to go back and corroborate any mistakes" made by their accountant, who was ill at the time he prepared appellants' return and has since passed away.

Appellants' engagement of the services of an accountant does not excuse them from the responsibility of reviewing their return with care and satisfying their tax obligations. Furthermore, taxpayers are required to keep books and records sufficient to establish matters reported in a return. (Int. Rev. Code, § 6001; Treas. Reg. § 1.6001-1; *Cracchiola v. Commissioner* (9th Cir. 1981) 643 F.2d 1383, 1385.) Treasury Regulation section 1.6001-1(e) provides that "the books or records . . . shall be kept at all times available . . . and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law."

Respondent provides a copy of appellants' federal account transcript which shows that the federal adjustments upon which its NPA was based have gone final and have been paid by appellants. Appellants have not provided evidence supporting their contention that there is error in respondent's proposed assessment, which is based on the federal adjustments.[5]

[4] Board of Equalization cases (designated "SBE") may generally be found at: http://www.boe.ca.gov/legal/legalopcont.htm.

[5] Appellants express an interest in reaching a settlement with respondent on this matter. The OTA has no authority to settle or compromise an income tax appeal. The OTA's jurisdiction is limited to determining the correct amount of appellants' California personal income tax liability. (*Appeal of Fred R. Dauberger, et. al.*, 82-SBE-082, Mar. 31, 1982.)

HOLDING

Appellants have not established error in the proposed assessment.

DISPOSITION

Respondent's action on appellants' protest of the proposed assessment for the year 2012 is sustained in full.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
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Alberto T. Rosas
Administrative Law Judge