

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18012108
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MICHAEL HUGHES) Date Issued: April 6, 2018
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OPINION

Representing the Parties:

For Appellant: Michael Hughes

For Respondent: Donna L. Webb, Staff Operation Analyst

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Michael Hughes (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on a proposed assessment of additional tax in the amount of \$487 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

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

FACTUAL FINDINGS

1. Appellant filed a timely 2011 California personal income tax return. On the return, appellant reported federal adjusted gross income (AGI) of \$67,991.00, less the standard deduction of \$7,538.00 for a taxable income of \$60,453.00 and tax of \$1,695.00. After subtracting exemption credits of \$519.00, and a nonrefundable renter’s credit of \$120.00, appellant reported a total tax liability of \$1,056.00. Appellant’s tax liability was satisfied

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

- by applying appellant's withholding credit of \$986.00, and a \$70.60 payment dated June 23, 2012.
2. Subsequently, under section 6103(d) of the Internal Revenue Code (IRC), FTB received federal information showing that the Internal Revenue Service (IRS) had adjusted appellant's 2011 federal return for pension income of \$4,385.00. The federal information also showed that the IRS had assessed a 10% early distribution tax of \$439.00.
 3. The IRS transcript of account reveals that as a result of the above federal adjustments, federal tax deficiency for 2011 of \$1,099.00 was assessed against appellant on September 8, 2014. The federal tax amount due was satisfied by crediting appellant with \$877.00 of federal tax withheld from appellant's pension distribution and by a \$236.00 advance payment of tax by appellant on July 21, 2014.
 4. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) dated July 15, 2015, that added the \$4,385.00 of pension income to appellant's California taxable income. The NPA revised appellant's taxable income to \$64,838.00, disallowed the renter's credit,² and included a 2.5% premature distribution tax of \$109.00 ($\$4,385.00 \times 2.5\% = \109.00) for a proposed additional tax of \$487.00 plus applicable interest.
 5. Appellant protested respondent's proposed assessment, asserting that the federal information was not accurate because appellant paid the applicable tax when he requested the pension withdrawal. Appellant stated that he used the withdrawal as a down payment on the purchase of a new house, as a first-time buyer. Appellant states that a pension withdrawal for such a purpose is nontaxable. Appellant asserts that the NPA does not properly reflect the federal adjustments, and appellant objects to the denial of the renter's credit.
 6. On July 5, 2016, respondent wrote to appellant and explained that the federal information indicated appellant's federal AGI was revised to \$72,376.00 based on the pension distribution of \$4,385.00.
 7. There is no evidence that the IRS cancelled or reduced its assessment.

²The NPA disallowed the nonrefundable renter's credit because appellant's revised California AGI exceeded the income amount allowable to claim that credit. (§ 17053.5)

8. Although the evidence shows that the payor of appellant's pension income withheld and paid over \$877 of taxes to the IRS (20 percent of the distribution amount), there is no evidence that any California taxes were withheld from appellant's pension distribution.
9. Respondent issued a Notice of Action (NOA) dated September 2, 2016, 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 a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986; *Appeal of 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 Magidow*, 82-SBE-274, Nov. 17, 1982.)

Generally, early distributions from qualified retirement plans are taxable, and a ten percent additional tax applies at the federal level on early distributions. (IRC § 72, (a)(1), (t).) California Revenue and Taxation Code section 17085 in relevant part conforms to IRC section 72. Section 17085(c)(1) reduces the percentage of the tax on early distributions to 2.5% for California purposes.

Here, respondent properly assessed additional tax based upon federal adjustments. 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 adjustments or in respondent's determination based upon those adjustments. Furthermore, the evidence establishes that while *federal* taxes were withheld and paid in connection with appellant's pension withdrawal, *no state taxes* were withheld.

There is an exception to the early distribution tax for qualified first-time home buyer distributions from an individual retirement plan. (IRC, § 72(t)(2)(F), (t)(8)). In the present case, appellant has provided no evidence to establish that the distribution qualified for the first-time

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

home buyer exception to the early distribution tax, and the imposition of the additional tax by the IRS indicates that the distribution did not qualify for any such exception.

Finally, we note that appellant's nonrefundable renter's credit was properly disallowed because appellant's revised California AGI exceeded the income amount allowable to claim that credit. (§ 17053.5.)

HOLDING

Accordingly, appellant has not shown error in respondent's determination or the federal adjustments upon 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

We concur:

DocuSigned by:
Grant S. Thompson
FC572D5881AE41B...
Grant S. Thompson
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge