

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010995
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MICHAEL LEE AND SHUAN LEE) Date Issued: March 16, 2018
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OPINION

Representing the Parties:

For Appellants: Michael Lee and Shuan Lee

For Respondent: Donna L. Webb, Staff Operation Specialist

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Michael Lee and Shuan Lee (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$1,860, plus interest, for the 2012 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellants filed a timely California joint income tax return for the 2012 tax year. Appellants' return reported federal adjusted gross income (AGI) of \$177,866, California taxable income of \$122,277, and tax due of \$6,372. Appellants had withholding credit of \$8,929 and an estimated tax payment of \$482, for a resulting overpayment of \$3,039 (i.e., \$8,929 + \$482 - \$6,372).

2. Per appellants' request on their return, respondent applied \$1,938 of the overpayment to their 2013 tax year as an estimated tax payment and refunded the remaining \$1,101, plus interest, to appellants on June 4, 2013.
3. Subsequently, respondent received an audit report from the Internal Revenue Service (IRS) showing appellants had \$20,000 in unreported pension income for the 2012 tax year.
4. Based on the federal audit determination, respondent issued a Notice of Proposed Assessment (NPA) to appellants on November 12, 2015, adding the additional \$20,000 in unreported pension income to their taxable income. The NPA proposed an additional tax of \$1,860, plus interest.
5. Appellants protested the NPA and provided an amended return. Appellants' amended return revised their federal AGI to \$197,866 (which included the \$20,000 pension income), and reported a resulting tax due of \$8,230. Appellants applied their withholding credit of \$8,929 and estimated tax payment of \$482, and claimed an overpayment of \$1,181.
6. Respondent replied to appellants' protest, indicating that although the total tax shown on appellant's amended return was the same as that on the NPA (\$8,230), it could not accept the amended return as filed because on that return appellants were claiming credits for the \$3,039 amount that previously had been refunded to them (in part by direct refund and in part by application of a portion of their overpayment to their 2013 tax year). Respondent provided a proposed amended return it prepared for appellants for illustrative purposes and informed appellants in its cover letter that, since appellants already claimed and received a refund of \$3,039, they could not claim that amount again on their amended return as a payment available to offset their revised 2012 tax liability.
7. Respondent issued a Notice of Action affirming the NPA, and appellants filed this timely appeal in response.

DISCUSSION

Issue - Have appellants shown error in respondent's proposed assessment, which was 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.)

The parties on appeal appear to agree on the revised federal AGI and California tax due amounts resulting from the addition of the previously unreported pension income. The parties disagree, however, as to the application of withholding credits and estimated payments. Revised returns provided by both parties reflect a withholding credit of \$8,929 and an estimated tax payment of \$482, for a total of \$9,411 in payments. However, respondent asserts that \$3,039 of this amount already has been refunded or credited to appellants, while appellants assert they are entitled to offset the revised tax liability by the full amount of the payments.


The facts show that respondent refunded \$1,101, plus interest, to appellants and transferred an additional amount of \$1,938 to appellants' 2013 tax year as an estimated payment, thus providing them a total refund of \$3,039 for the 2012 tax year prior to the issuance of the NPA. Since this amount was already refunded to appellants, they cannot claim this \$3,039 amount as a credit on their amended return. We therefore agree with respondent's calculations.

HOLDING

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

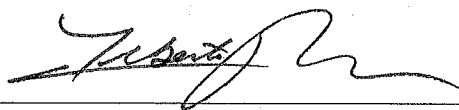
DISPOSITION

Respondent's proposed assessment for the 2012 tax year is sustained.

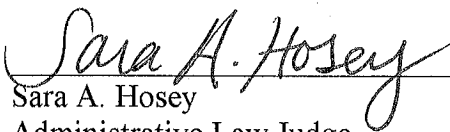


John O. Johnson
Administrative Law Judge

We concur:



Alberto T. Rosas
Administrative Law Judge



Sara A. Hosey
Administrative Law Judge