

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011008
)
MATTHEW S. DICKERSON AND) Date Issued: September 10, 2018
BROOKE DICKERSON)
)
_____)

OPINION

Representing the Parties:

For Appellants: Matthew S. Dickerson

For Respondent: Donna L. Webb, Staff Operation Specialist

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Matthew S. Dickerson and Brooke Dickerson (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$1,522.40, plus interest, for the 2013 tax year.

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

ISSUE

Have appellants shown error in respondent’s assessment, which is based on information received from the Internal Revenue Service (IRS)?

FACTUAL FINDINGS

1. Appellants timely filed a 2013 California resident income tax return.
2. Subsequently, respondent received information from the IRS that, for the 2013 tax year, appellants did not report \$16,846 of income on their California return. As relevant to this

¹ Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation Code for the tax year at issue.

appeal, this unreported amount was largely the result of \$15,484 related to cancellation of debt (COD) income.

3. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA), dated January 12, 2017. The NPA increased appellants' California taxable income by \$16,846 to match the IRS-adjusted increase to their federal adjusted gross income (AGI). This resulted in proposed additional tax due of \$1,522.40, plus interest.
4. By letter dated February 10, 2017, appellants protested the NPA, contending they were insolvent and therefore the COD income of \$15,484 was properly excluded from gross income. They asserted the IRS accepted this position when it accepted their original 2013 federal Form 1040 tax return.
5. By letter dated July 21, 2017, respondent contended its NPA was correct. Respondent stated that if appellants disagreed with the NPA, they would need to resolve the issue with the IRS because California law is the same as federal law with respect to the adjusted income item at issue. Respondent also asked appellants to provide a copy of their federal account transcripts that showed the federal AGI amount was as asserted by appellants in their protest letter.
6. Respondent affirmed its NPA with a Notice of Action (NOA). This timely appeal followed.²

DISCUSSION

Respondent's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)³ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

A taxpayer must report federal changes to income or deductions to the FTB within six months of the date the federal changes become final. (§ 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes are erroneous. (*Ibid.*)

² Respondent requested in its brief on appeal that appellants provide specific information to determine whether they were insolvent and therefore permitted to exclude their COD income from gross income. Appellants did not respond to this request.

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

Pursuant to section 17071, California generally incorporates by reference Internal Revenue Code (IRC) section 61, which defines gross income.⁴ IRC section 61(a)(12) provides that gross income includes COD income. However, as relevant here, IRC section 108(a)(1)(B), to which California conforms under section 17131, provides an exception that excludes COD income from gross income if the taxpayer is insolvent. IRC section 108(d)(3) provides that, for purposes of IRC section 108, the term “insolvent” means the excess of liabilities over the fair market value of assets. Furthermore, with respect to any discharge, whether a taxpayer is insolvent, and the amount by which the taxpayer is insolvent, is determined on the basis of the taxpayer’s assets and liabilities immediately before the discharge. (IRC, § 108(d)(3).)

In addition, under section 17072(a), California generally incorporates by reference IRC section 62, which defines AGI. Thus, in the absence of California-specific addition and subtraction modifications, taxpayers generally must report the same federal AGI on the California return as was reported on the federal return.

In the present case, appellants contend their IRS Tax Return Transcript, which lists the amounts shown on their original federal return, prove they properly reported their federal AGI on their California return and, therefore, their California taxable income and resulting tax were accurately computed as filed. However, subsequent to the filing of appellants’ 2013 California return, respondent received information from the IRS showing it had assessed additional tax for that same tax year. As relevant here, the IRS made adjustments to appellants’ federal AGI for their failure to report COD income. In other words, the IRS Tax Return Transcript provided by appellants only shows the original amounts reported on their federal return, rather than subsequent IRS-adjusted amounts reflected on the IRS’s Wage and Income Transcript and Account Transcript for appellants (attached to respondent’s brief), which are controlling here.

Appellants have not provided evidence to contradict these subsequent federal adjustments or otherwise shown that they are in error. Indeed, appellants have not provided any documentation—such as bank statements, credit card bills, or any other evidence of indebtedness—that proves they were insolvent and thus entitled to exclude the COD income from their gross income. Accordingly, appellants have not carried their burden of proof.

⁴For the 2013 tax year, section 17024.5(a)(1)(O) provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2009 version of the IRC. Thus, references herein to the IRC are to that version.

HOLDING

Appellants have not shown error in respondent's assessment, which is based on information received from the IRS.

DISPOSITION

Respondent's assessment is sustained.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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[Signature]
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Tommy Leung
Administrative Law Judge

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