

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>MARIA L. AHUMADA</b>  <hr style="width: 40%; margin-left: 0;"/>	) ) ) ) ) ) )	OTA Case No. 18011024  Date Issued: September 12, 2018
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**OPINION**

Representing the Parties:

For Appellant:	Maria L. Ahumada
For Respondent:	Freddie C. Cauton, Legal Assistant

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> Maria L. Ahumada (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$3,591 of additional tax, and applicable interest, for the 2013 tax year.

Appellant waived her right to an oral hearing. Therefore, we decide the matter based on the written record.

**ISSUE**

Is appellant liable for additional tax of \$3,591, and applicable interest, for the 2013 tax year?

**FACTUAL FINDINGS**

1. Forms W-2 for 2013 show that appellant received wages, tips or other compensation from employment that year totaling \$39,709, federal withholding of \$2,576 and state withholding of \$342.
2. A Form 1099-R for the 2013 tax year shows appellant received a taxable distribution from a pension, annuity, retirement or profit-sharing plan, individual retirement account

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<sup>1</sup> Unless otherwise indicated, all statutory (“section” or “§”) references are to the Revenue and Taxation Code.

(IRA), insurance contract, or similar retirement funding tool (retirement plan) of \$41,279. It also shows federal withholding of \$8,256 and state withholding of \$826.

3. Appellant timely filed her California Income Tax Return (Form 540) for the 2013 tax year, claiming head of household filing status and reporting federal adjusted gross income of \$40,047 and no tax due.<sup>2</sup> The copy of appellant's unsigned and undated federal return that she filed with her state return showed the retirement plan distribution of \$41,279, but indicated that none of it was taxable because it was rolled over.<sup>3</sup> Based on appellant's state return, FTB refunded appellant's entire withholding credit of \$1,168 ( $\$342 + \$826 = \$1,168$ ) on February 26, 2014.
4. The Internal Revenue Service (IRS) informed FTB that appellant did not include \$41,278<sup>4</sup> in taxable pension or annuity income in her taxable income and that, as a result, the IRS had increased her taxable income by that amount. This caused FTB to issue a Notice of Proposed Assessment (NPA) to appellant on February 28, 2017. The NPA advised appellant about the \$41,278 income adjustment, which increased her taxable income to \$77,203, and informed her that additional tax of \$3,591, and interest, were due.
5. Around the end of April 2017,<sup>5</sup> appellant responded to the NPA by submitting to FTB copies of a federal income tax return for 2013, dated April 14, 2014, and signed by appellant, and a Form 1099-R. This 2013 federal return, which was not the one appellant timely filed with her state return, reports pension and annuity income of \$41,279 and shows all of that as taxable.
6. By letter dated August 3, 2017, FTB advised appellant that it received her submission. The letter explained that FTB concluded that its NPA was correct because appellant did not include the pension or annuity income in her adjusted gross income reported on appellant's California return, and that the NPA gave appellant the \$825.57 withholding credit reported in the Form 1099-R.

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<sup>2</sup> FTB disallowed appellant's claimed head of household filing status and dependent exemption credit and issued a Notice of Proposed Assessment (NPA) to appellant. Appellant did not protest that NPA, and the proposed assessment went final prior to the retirement income adjustment at issue here. The change in filing status and the exemption credit are not at issue here.

<sup>3</sup> This federal return states "ROLLOVER."

<sup>4</sup> The \$1 difference, probably the result rounding, is immaterial.

<sup>5</sup> FTB received these documents on May 1, 2017.

7. On September 15, 2017, FTB issued a Notice of Action, affirming its proposed assessment of \$3,591 tax, and applicable interest. Appellant filed a timely appeal.
8. According to an IRS account transcript for appellant's 2013 account, the IRS: (1) issued a refund of \$7,978 to appellant on February 26, 2014, consistent with the federal return appellant timely filed with her state return (see paragraph 3, above); (2) assessed additional tax (\$7,792) and penalties (\$1,558) in February 2016, consistent with the federal adjustments referred to above; and (3) has not adjusted the liability, except for periodic payments appellant has been making against the liability since August 2015.

### DISCUSSION

Section 18622 states a taxpayer shall either concede the accuracy of a federal determination or state how it is wrong. We presume a deficiency determination based on a federal assessment is correct, and a taxpayer bears the burden of proving otherwise. (*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.)<sup>6</sup> Unsupported assertions are not enough to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

The federal return included with appellant's state return indicates appellant first reported on her 2013 federal return that the retirement plan distribution was not taxable because she rolled it over. The evidence shows that the IRS ultimately found that the entire distribution was taxable. The IRS's conclusion may have been based on the Form 1099-R, which states the entire distribution was taxable, and appellant's failure to prove otherwise; but, regardless of the reasons, appellant's account transcript for 2013 shows the IRS did not delete or adjust its determination. Here, appellant did not persuade the IRS that she was entitled to an adjustment, and she has not given us any evidence to show that she completed a tax-free rollover of the distribution or that she is entitled to an adjustment of the liability on any other basis.<sup>7</sup> On the contrary, the evidence shows that the entire distribution was subject to tax, that the federal

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<sup>6</sup> Formal and Memorandum opinions issued by the Board of Equalization can be seen on the Board's website at <http://www.boe.ca.gov/legal/legalopcont.htm>.

<sup>7</sup> It is possible to roll some retirement plan funds over into another qualified plan. For example, Internal Revenue Code (IRC) section 408(d)(3) discusses rolling IRA funds over into other qualified accounts or annuities and requires that the transfer occur within 60 days, and IRC section 401(a)(31) discusses the requirement that roll-over distributions from certain employee benefit plans be direct, trustee-to-trustee transfers.


adjustment was correct, and that FTB correctly determined additional tax of \$3,591 for the 2013 tax year.

HOLDING


Having failed to establish that the federal determination was wrong, or that FTB should reduce her liability, we find that appellant is liable for additional tax of \$3,591, and applicable interest, for the 2013 tax year.


DISPOSITION

We sustain FTB's determination of additional tax of \$3,591, and applicable interest, for the 2013 tax year.

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Michael F. Geary  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

DocuSigned by:  
  
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Daniel K. Cho  
Administrative Law Judge