

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011289
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FREDDIE L. RAGLAND) Date Issued: August 27, 2018
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OPINION

Representing the Parties:

For Appellant: Freddie L. Ragland
For Respondent: Donna L. Webb, Staff Operation Specialist

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Freddie L. Ragland (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of \$784, plus interest, for the 2011 tax year.

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

ISSUES

1. Is respondent’s assessment barred by the statute of limitations?
2. Has appellant shown error in respondent’s assessment, which is based on information received from the Internal Revenue Service (IRS)?

FACTUAL FINDINGS

1. Appellant timely filed a 2011 California resident income tax return. On that return, appellant reported federal adjusted gross income (AGI) of \$46, California adjustments (subtractions) of \$5, California AGI of \$41, a deduction of \$10 (for what appeared to be

the standard deduction), California taxable income of \$31, and a tax of \$892.¹ After applying personal and senior exemption credits totaling \$204 and California income tax withholding of \$854, appellant reported an overpayment of \$166 and requested a refund of that amount.

2. During return processing, respondent determined that appellant had made mathematical errors in calculating his California tax liability and therefore recomputed his tax. Specifically, respondent allowed a standard deduction of \$3,769, instead of \$10 as reported by appellant. This eliminated appellant's California AGI of \$41 as reported, resulting in a refund for the full amount of his \$854 withholding credit, which respondent issued on May 30, 2012. Respondent also issued a Return Information Notice to appellant that reflected these mathematical changes.
3. Subsequently, respondent received information from the IRS that appellant's federal AGI was \$45,271,² and not the \$46 appellant had reported on his California return. Respondent also received information from the IRS that he claimed federal itemized deductions of \$9,890.
4. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA), dated March 30, 2016. The NPA increased appellant's federal AGI as reported on his California return from \$46 to \$45,271. This, among other adjustments, resulted in revised California taxable income of \$30,927³ and proposed additional tax due of \$784, plus interest.
5. By letter dated April 29, 2016, appellant timely protested the NPA, asserting that he properly reported the same federal AGI on both his federal and California returns. As support, appellant enclosed copies of his 2011 federal and California returns. However, these returns did not reflect that appellant's federal AGI was the same as reported on his California return. Rather, as mentioned above, appellant's federal AGI as reported to the

¹ Appellant's California return had numerous mathematical errors and therefore the figures on that return were not properly computed as filed.

² This amount consists of \$1,496 from interest, \$5,809 from an individual retirement account (IRA), \$32,657 from a pension, and \$5,309 from social security benefits.

³ We noted some minor discrepancies between the numbers shown on the NPA and those shown on the federal return. For example, the NPA reported social security benefit income of \$5,304 instead of \$5,309 as reported on the federal return, for a \$5 difference. However, due to other offsetting adjustments, these discrepancies do not affect the overall California taxable income calculation or resulting principal tax due in the NPA.

IRS was \$45,271, which did not match the federal AGI of \$46 as reported to California. Appellant also questioned how the negative California taxable income of \$3,728 from the NPA was computed, which was used as the starting point from which respondent made further adjustments to arrive at the assessed tax. Appellant further contended that the NPA was barred by the four-year statute of limitations for deficiency assessments.

6. In its position letter dated June 12, 2017, respondent acknowledged receiving appellant's protest. Respondent explained that the NPA was based on information received from the IRS, which showed that appellant reported a different federal AGI on the California return than what was reported on the federal return. Respondent further explained that the negative taxable income of \$3,728 was computed by subtracting the California standard deduction of \$3,769 from the as filed California AGI of \$41. Respondent then asked appellant to provide additional information to support his position if he still disagreed.
7. By letter dated July 7, 2017, appellant responded to respondent's June 12, 2017 position letter. Appellant reasserted his position that the statute of limitations bars respondent's NPA, and attached a law summary of the statute of limitations for deficiency assessments from respondent's website. Appellant further contended that the reason his federal AGI of \$45,271 was reported as \$46 on his California return was respondent's website rounded off the \$45,271 to \$46.⁴ As support, appellant enclosed two copies of his 2011 California return—one prepared by hand and the other mostly prepared electronically but with handwritten figures next to the typed figures.⁵
8. Respondent affirmed its NPA with a Notice of Action (NOA), dated July 19, 2017.
9. By letter dated August 2, 2017, respondent acknowledged appellant's letter dated July 7, 2017, but reaffirmed its position set forth in the NPA and asserted the NPA was timely issued within the four-year statute of limitations.
10. This timely appeal followed.

⁴ While unclear from the record, it appears appellant used one of respondent's online, fill-in forms to prepare his 2011 Form 540. Respondent states that its records do not indicate that appellant's entries were altered or "rounded" down to \$46 by respondent.

⁵ The handwritten amounts on both returns appear to list federal AGI of \$45,271, which is the same amount used by respondent to calculate appellant's tax. However, it appears neither of these returns was actually filed with respondent because respondent's brief includes a copy of what appears to be the actual filed 2011 California return, which lists a federal AGI of \$46.

DISCUSSION

Issue 1 – Is respondent’s assessment barred by the statute of limitations?

R&TC section 19057(a) provides that the NPA shall be mailed to the taxpayer within four years after the return was filed. R&TC section 19066 further specifies that a tax return filed before the last day for filing (determined without regard to any extensions) shall be deemed to have been filed on that last day for purposes of calculating the statute of limitations. Pursuant to R&TC section 18566, individual calendar year taxpayers are required to file their income tax returns by an original due date that is on or before April 15th. Thus, if a return is filed before April 15th, it is considered timely filed on April 15th. Therefore, the NPA must be mailed within four years of April 15th to be within the statute of limitations for a deficiency assessment.

Here, appellant’s tax return for 2011 was timely filed on or before April 17, 2012, the original due date determined without extension.⁶ Therefore, the last day for the four-year statute of limitations for a deficiency assessment expired on April 17, 2016. Because the NPA was issued on March 30, 2016, we conclude respondent’s assessment was issued in a timely manner.

Issue 2 – Has appellant shown error in respondent’s assessment, which is based on information received from the IRS?

Respondent’s determination is presumed 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.)⁷ 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.)

⁶ Appellant’s 2011 California income tax return was originally due by April 17, 2012, because April 15, 2012, fell on a Sunday and April 16, 2012, was a legal holiday, Emancipation Day, in the District of Columbia. (Cal. Code Regs., tit. 18, § 18566.)

⁷ Pursuant to California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE’s precedential opinions are viewable on BOE’s website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

Pursuant to R&TC section 17072(a), California conforms to Internal Revenue Code (IRC) section 62, defining federal AGI, except as otherwise provided.⁸ Thus, subject to California-specific addition and subtraction modifications, such as the exclusion from California gross income of certain social security benefits under R&TC section 17087(a), taxpayers generally must report the same federal AGI on both their federal and California returns.

In the present case, appellant's federal AGI was \$45,271 instead of \$46 as reported on his California return. Thus, because appellant did not report the same federal AGI amount on his California return, respondent has correctly calculated his tax due based on his federal AGI of \$45,271. The reason appellant owes additional tax is he received a refund of withheld tax of \$854, when in fact he was only due a refund of \$172. As a result, he owes \$682 in additional tax (plus interest), which is the difference between the \$854 refund he received and the \$172 refund he should have received.

Finally, respondent acknowledges in its brief that it erroneously denied the senior exemption credit of \$102 under R&TC section 17054(c), which appellant claimed on his California return. Therefore, the assessed tax of \$784, plus interest, in the NOA shall be revised downward to \$682, plus interest.

HOLDINGS

1. Appellant has not shown that respondent's assessment is barred by the statute of limitations.
2. Appellant has not shown error in respondent's assessment, which is based on information received from the IRS, but respondent's assessment shall be revised to allow a \$102 senior exemption credit.

⁸ For the 2011 tax year, R&TC section 17024.5(a)(1)(O) provides that for Personal Income Tax Law purposes, California conforms to the IRC as of a January 1, 2009, specified date. Thus, references herein to the IRC are to the version in effect on January 1, 2009.

DISPOSITION

Respondent's action in assessing additional tax is sustained, except its assessment shall be modified to allow a \$102 senior exemption credit.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge