**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | ) | OTA Case No. 18011308 |
| | ) | |
| **GLENDA TURNER** | ) | Date Issued: September 10, 2018 |
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**OPINION**

Representing the Parties:

For Appellant: Glenda Turner

For Respondent: Claudia L. Cross, Senior Legal Analyst

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,[1] Glenda Turner (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing additional tax in the amount of $640, plus interest, for the 2011 tax year.

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

ISSUE

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 Form 540. On that return, appellant reported California taxable income of $31,962, which included a subtraction for royalty income of $9,567 on Schedule CA.[2]

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

[2] Appellant entered the royalty income as a California subtraction adjustment on Schedule CA, page 1, line 21, column B. This had the effect of removing the income from appellant's California taxable income.

2. Subsequently, respondent received information from the IRS concerning the income and deductions reported on appellant's 2011 federal personal income tax return. Based on that information, respondent determined that, for California purposes, appellant had incorrectly subtracted royalty income of $9,567 on Schedule CA that was filed with her Form 540.
3. Respondent issued a Notice of Proposed Assessment (NPA), dated November 6, 2015. The NPA disallowed the entire royalty subtraction of $9,567, and therefore added it back to appellant's as filed California taxable income of $31,962. This resulted in revised California taxable income of $41,529, and proposed additional tax due of $640, plus interest.
4. By letter dated December 21, 2015, appellant timely protested the NPA, contending the royalty income was earned from sources outside of California because it was derived from two payor corporations—one located in Oklahoma and the other located in Louisiana. Appellant attached copies of two Forms 1099-MISC received from these corporations showing the royalty income in question.
5. By letters dated April 6, 2017, and May 24, 2017, respondent acknowledged receiving appellant's protest, explained that California residents are taxed on income from all sources, even if earned outside of California, and allowed appellant additional time to submit evidence that she was entitled to a credit for taxes paid on the royalty income in other states. Appellant did not respond.
6. Respondent affirmed its NPA with a Notice of Action, dated August 9, 2017. This timely appeal followed.[3]

## DISCUSSION

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.)[4] 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.) In the

[3] According to respondent, appellant stated during a June 30, 2017 telephone conversation with respondent's staff that she agreed with the determination. The appeal indicates she does not.

[4] Precedential opinions of the State Board of Equalization (BOE) are viewable on BOE's website: http://www.boe.ca.gov/legal/legalopcont.htm.

absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

California residents are subject to tax on their entire taxable income, regardless of where that income is earned or sourced. (§ 17041(a).) California generally incorporates by reference Internal Revenue Code (IRC) section 61, which defines "gross income."[5] IRC section 61(a)(6) provides that gross income includes royalties. Thus, California taxes residents on their worldwide royalty income, even if it is derived from sources in other states.

In the present case, it is undisputed that appellant is a California resident who earned royalty income from out-of-state sources. Appellant, therefore, is subject to tax on her worldwide income, including her royalty income derived from sources in other states. Because appellant has not argued or provided evidence that she is entitled to claim a credit on her California return for income taxes paid on the royalty income in other states, we conclude the assessment was properly computed.

Finally, in her appeal letter, appellant contends she is financially unable to pay the assessment. While we are sympathetic to appellant's financial situation, the Office of Tax Appeals (OTA) does not have the statutory authority to adjust a taxpayer's tax liability based on the taxpayer's difficulties in making payments. The OTA also cannot propose compromises or settlements, since the only power that we have is to determine the correct amount of an appellant's California tax liability for the appeal year.

## HOLDING

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

[5] For the 2011 tax year, 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.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Douglas Bramhall
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Douglas Bramhall
Administrative Law Judge