

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18011323
)	
EUGENIO A. EDMUND)	Date Issued: August 27, 2018
AND ENEIDA H. EDMUND)	
)	
)	

OPINION

Representing the Parties:

For Appellants:	Eugenio A. Edmund Eneida H. Edmund
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For Respondent:	Donna L. Webb, Staff Operation Specialist
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D. CHO, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Eugenio A. and Eneida H. Edmund (collectively referred to as appellants) appeal from an action of the Franchise Tax Board (FTB or respondent) in denying appellants' protest of a proposed assessment of \$555 in additional tax, plus applicable interest for the 2013 tax year.

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

ISSUE

Whether appellants have established that respondent erred in its proposed assessment of additional tax for the 2013 tax year based on a federal determination.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2013 California Resident Income Tax Return. On this return, appellants reported California adjusted gross income of \$93,737, California taxable income of \$69,741, and a corresponding California tax of \$2,176. Appellants

¹ Unless otherwise indicated, all section references are to sections of the California Revenue and Taxation Code.

- also reported exemption credits of \$538, which resulted in a California tax liability of \$1,638.
2. Appellants reported a California withholding credit amount of \$2,311, which resulted in a requested refund of \$673. Respondent refunded this amount on March 5, 2014.
 3. Respondent subsequently received information from the Internal Revenue Service (IRS) that appellants underreported their 2013 taxable income. Specifically, the IRS made an adjustment to appellants' income by increasing their taxable wages by \$9,158, which characterized the income as "other income" and listed JP Morgan Chase Bank as the payor. To verify the "other income," respondent obtained a copy of appellants' Federal Wage and Income Transcript from the IRS, which had a Form 1099-MISC reported by JP Morgan Chase Bank N.A. Military Processing with the income amount of \$9,158. Respondent concluded that this was the "other income" described in the federal information received from the IRS.
 4. According to the federal information, appellants agreed with the federal adjustment. However, appellants did not inform respondent of this federal adjustment.
 5. Based on the federal adjustment, respondent issued a Notice of Proposed Assessment (NPA) on November 8, 2016, that increased appellants' 2013 California income by \$9,158, which resulted in an additional California tax of \$555, plus applicable interest.
 6. By fax sent on December 29, 2016, appellants protested the NPA.
 7. By letter dated July 3, 2017, respondent informed appellants that the NPA was based on the federal adjustment and that respondent has not received any information or documentation establishing that the federal assessment was cancelled or reduced. Respondent provided appellants an opportunity to provide such information and documentation by August 2, 2017.
 8. Appellants did not provide any additional information in response to the July 3, 2017 letter, and on September 7, 2017, respondent issued a Notice of Action affirming the NPA.
 9. This timely appeal followed.

DISCUSSION

Section 18622(a) requires a taxpayer to concede the accuracy of a federal change to a taxpayer's income or to state where the change is erroneous. It is well settled that a deficiency

assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986.)²

Generally, California conforms to the definition of "gross income" contained in section 61 of the Internal Revenue Code (IRC). (See section 17071.) Gross income is defined as "all income from whatever source derived," unless specifically excluded. (IRC, § 61(a).)

In this situation, respondent obtained federal information showing an adjustment made to appellants' 2013 federal tax return. Specifically, appellants' taxable wages were increased by \$9,158 of "other income" that was subsequently determined to be from JP Morgan Chase Bank N.A. Military Processing. In addition, the federal information indicated that appellants agreed with the IRS assessment. Based on this information, respondent adjusted appellants' corresponding California return by increasing appellants' 2013 California taxable income by \$9,158.

To verify the amount of the federal adjusted gross income as determined by the IRS, respondent obtained a copy of appellants' federal account transcript, which confirmed that the IRS did not make any further adjustment to the assessment. The transcript also established that the IRS determination went final and was paid in full.

Although appellants argued that they disagreed with the NPA, appellants have not provided any specific arguments or explanation as to why the federal adjustment or respondent's corresponding proposed assessment are incorrect. In fact, according to a letter to the IRS dated September 28, 2015, appellants conceded that they failed to report the "other income" on their 2013 tax year return. Nonetheless, appellants have argued that they requested reconsideration of the IRS assessment and provided a copy of a letter to the IRS, dated November 4, 2015, stating that Mr. Edmund was a student in the 2013 tax year and paid \$1,758 for qualified education expenses. However, appellants have neither provided a response from the IRS regarding the requested reconsideration nor have appellants provided any documentation to demonstrate that a subsequent adjustment was made to the increase in appellant's federal adjusted gross income as

² Pursuant 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>.

stated in the federal information and federal transcript. Therefore, we find that appellants have failed to meet their burden of proof.

HOLDING

Appellants have not shown error in respondent's proposed assessment of additional tax for the 2013 tax year based on a federal determination.

DISPOSITION

Respondent's proposed assessment for the 2013 tax year is sustained.

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

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Douglas Bramhall
EA2E033G0906484...
Douglas Bramhall
Administrative Law Judge