

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011369
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LUIS A. SILVA AND DIANA SILVA) Date Issued: August 29, 2018
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OPINION

Representing the Parties:

For Appellants: Luis A. Silva and Diana Silva
For Respondent: Rachel Abston, Senior Legal Analyst

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Luis A. Silva and Diana Silva (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) on a proposed assessment of additional tax in the amount of \$261 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 demonstrated error in the proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellants filed a timely 2013 California Resident Income Tax Return (Form 540). On the return, appellants reported federal adjusted gross income (AGI) of \$81,973, less California subtractions of \$11,611 and itemized deductions of \$48,153 for taxable income of \$22,209 and tax of \$292. After subtracting exemption credits of \$212, and a

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

nonrefundable renter's credit of \$120.00, appellants reported zero total tax liability.

Appellants reported withholding credits of \$2,223, which FTB refunded to appellants on February 24, 2014.

2. Subsequently, under section 6103(d) of the Internal Revenue Code (IRC), FTB received federal information showing that the Internal Revenue Service (IRS) had adjusted (increased) appellants' 2013 federal return by \$22,286, consisting of unreported interest income of \$21, unreported retirement income of \$21,828, and a disallowed miscellaneous deduction of \$437.²
3. The IRS issued to appellants a CP2000 notice for the 2013 tax year. The notice reveals that as a result of the above federal adjustments, the IRS assessed a federal tax deficiency for 2013 of \$4,470, applied federal tax withholdings of \$4,500 and a payment of \$1,500, and issued a refund of \$1,530. FTB obtained appellants' federal Wage Transcript and Account Transcript. The transcripts reflect the foregoing information and do not show that the IRS cancelled or reduced the assessment, which has gone final. The CP2000 notice indicates that appellants fully agreed with the federal assessment.
4. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) dated January 24, 2017, that applied the foregoing adjustments to appellants' taxable income and proposed additional tax of \$261 plus applicable interest.³
5. Appellants protested respondent's proposed assessment, asserting that all tax, including the applicable state tax, had been withheld from appellants' retirement income. Specifically, appellants' appeal letter contends that when appellant Diana Silva retired from the Los Angeles Unified School District, she "asked that the agency that took care of my funds withdraw all necessary taxes." Appellants advise that they no longer live or work in California and have no paperwork to show that the taxes were withheld.
6. FTB issued a Notice of Action (NOA) dated August 21, 2017, affirming the NPA. This timely appeal followed.

²Appellants' federal itemized deductions included miscellaneous deductions that are allowable only to the extent they exceed 2% of appellants' federal AGI. (§ 17076; IRC, § 67.)

³The NPA also disallowed the nonrefundable renter's credit because appellants' revised California AGI exceeded the income amount allowable to claim that credit. (§ 17053.5.)

DISCUSSION

Section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Hutchinson*, 82-SBE-121, June 29, 1982.)⁴ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

Section 17041 imposes a tax "upon the entire taxable income of every resident of this state." Section 17071 incorporates IRC section 61, which defines "gross income" as "all income from whatever source derived," including pension income. Further, Section 17501 incorporates IRC section 408(d) to include any pension distribution income. Because of California's conformity with IRC sections 61 and 72, California residents who receive distributions from a retirement plan must include these amounts in taxable income for California purposes.

Here, it is undisputed that appellants were California residents for the 2013 tax year, during which they received income from their retirement plan of \$21,828. That income is subject to California income tax, and appellants do not argue to the contrary. Instead, appellants contend that the applicable California tax was withheld in accordance with appellants' instructions; however, there is no evidence establishing that any California tax was withheld from the retirement income. Moreover, appellants did not report the retirement income (nor the \$21 interest income) on their 2013 tax return, regardless of whether any California tax had been withheld from those amounts. Therefore, FTB properly assessed additional tax based upon federal adjustments, and appellants have not established any error in FTB's determination.

HOLDING

Appellants have not shown error in respondent's determination or the federal adjustments upon which it is based.

⁴ Board of Equalization cases are generally available for viewing on the Board's website. (<http://www.boe.ca.gov/legal/legalopcont.htm>.)

DISPOSITION

Respondent's action is sustained.

DocuSigned by:

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge