

2. Respondent then received information from IRS showing appellants' federal AGI was \$106,239, a difference of \$6,093. Appellants did not claim itemized deduction on their federal return.
3. Based on this information, respondent issued a Notice of Proposed Assessment (NPA) increasing appellants' taxable income by \$6,093, disallowing the adjustments to income of \$38,603 and the itemized deductions of \$14,680 (and instead allowing the standard deduction of \$7,340), and proposing additional California tax of \$3,689 plus applicable interest.
4. Appellants protested the NPA claiming that they had overpaid their 2013 taxes by \$9,000 and that the additional tax should be taken from this amount.
5. Respondent issued a Notice of Action (NOA) affirming the NPA.
6. Appellants filed this timely appeal.
7. OTA held a pre-hearing conference on September 6, 2018, at which appellant-husband stated they did not contest the 2010 proposed additional tax, but rather the application of payments and garnishments from tax years not at issue.

DISCUSSION

Respondent's determination is presumed to be 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.)³ 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.)

Pursuant to section 17072(a), California conforms to Internal Revenue Code (IRC) section 62, defining AGI, except as otherwise provided.⁴ Thus, subject to California-specific addition and subtraction modifications, taxpayers generally must report the same federal AGI on both their federal and California returns. In addition, a taxpayer must report federal changes to income or deductions to the FTB within six months of the date the federal changes become final.

³ Board of Equalization (BOE) opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

⁴ For the 2010 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.

(§ 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes are erroneous. (*Ibid.*)

In the present case, appellants' federal AGI was \$106,239 instead of \$100,146.82 as reported on their California return. Furthermore, appellants claimed double the standard deduction in 2010 to make up for the fact that they allegedly failed to claim the standard deduction in 2009. Appellants also claimed \$38,603 in unsubstantiated California adjustments. Appellants do not provide evidence to show error or contradict the difference in AGI, treatment of deductions, or the claimed California adjustments. In fact, appellants do not contest the additional tax assessed.⁵ Thus, because appellants have not shown error in the adjustments, appellants owe the proposed assessment of additional tax for the 2010 tax year.

HOLDING

Appellants have not shown error in respondent's proposed assessment of additional tax for 2010.

DISPOSITION

Respondent's action is sustained in full.

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

⁵ We note that we are unable to consider the other tax years not at issue before us referenced by appellants and the garnishments and payments made therein.