

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042638
JIM GLINSKAS) Date Issued: January 30, 2019
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_____)

OPINION

Representing the Parties:

For Appellant: Jim Glinskas

For Respondent: Freddie C. Cauton, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Jim Glinskas, (appellant) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$124 of additional tax, and applicable interest, for the 2013 taxable year.

Appellant waived his right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUE

Has appellant shown error in FTB’s proposed assessment for taxable year 2013, which was based on a federal determination?

FACTUAL FINDINGS

1. Appellant filed a timely 2013 California Resident Income Tax Return (Form 540), reporting \$32,637 of federal adjusted gross income (AGI).
2. On April 15, 2018, FTB received information from the Internal Revenue Service (IRS) that showed an adjustment to appellant’s AGI, of \$9,089, which increased his federal AGI to \$41,726. The increase to appellant’s AGI was based on forgiveness of debt by “PNCBANK NATIONAL ASS” (PNC Bank).

3. Based on the federal adjustment, FTB issued a Notice of Proposed Assessment (NPA), making the same adjustment to appellant's California taxable income, and proposing additional tax of \$124, plus interest.
4. In an undated letter to FTB, appellant protested the proposed assessment, and asserted that he lost his house in 2013, and that he did not agree with the IRS that the cancellation of the balance owed on his "second mortgage" was income. Appellant did not provide any documentary evidence supporting his assertion.
5. On August 24, 2017, FTB sent to appellant a notice that explained it had no information showing the IRS had canceled or reduced its adjustment to appellant's 2013 income.
6. An IRS Account Transcript, dated April 25, 2018, shows that appellant was assessed with additional tax and interest. It does not show any reduction of gross income.
7. An IRS Wage and Interest Transcript, dated April 25, 2018, reflects that a Form 1099-C (Cancellation of Debt) was issued, reporting that PNC Bank discharged appellant's debt in the amount of \$9,089. The discharged debt is described as a "consumer loan." The IRS transcript also reflected that an additional Form 1099-C (Cancellation of Debt), was issued, reporting that NATIONSTAR MORTGAGE LLC (Nationstar) discharged appellant's "mortgage loan" debt of \$42,589.
8. On November 22, 2017, FTB issued a Notice of Action, confirming its NPA.
9. Appellant appealed FTB's action, asserting that he does not agree with the IRS that "LOSING [his] HOUSE AND HUNDREDS OF THOUSANDS OF DOLLARS in both equity and property was in fact an income." Appellant did not attach any evidence to support his claim.

DISCUSSION

When FTB's determination is reasonable and rational, that 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 Myers*, 2001-SBE-001, May 31, 2001.)¹ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

¹ Board of Equalization (BOE) opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

A taxpayer must report federal changes to income or deductions to FTB within six months of the date the federal changes become final. (R&TC, § 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes are erroneous. (*Ibid.*)

Pursuant to R&TC section 17071, California generally incorporates by reference Internal Revenue Code (IRC) section 61, which defines gross income.² The version of IRC section 61(a)(12) that was operative for 2013, provided that gross income included income from discharge of indebtedness. Generally, the discharge of indebtedness, in whole or in part, may result in the realization of income, otherwise known as cancellation of debt (COD) income. (Treas. Reg. § 1.61-12.) However, IRC section 108, to which California conforms under section 17131, provides exceptions that exclude COD income from gross income under certain circumstances. As relevant to appellant's claim, IRC section 108(a)(1)(E) provides that "qualified principal residence indebtedness" that is discharged may be excluded from gross income. For purposes of IRC section 108, the term "qualified principal residence indebtedness" is defined in IRC section 163(h)(3)(B). (IRC, § 108(h)(2).) To be excluded from gross income, the debt must have been incurred for the purposes of acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and must be secured by the residence. (IRC, § 163(h)(3)(B).) Additionally, any indebtedness secured by a principal residence that resulted from the refinancing of indebtedness for the same purposes may also be excluded from gross income, but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness. (IRC, § 163(h)(3)(B)(i)(II).)

In this case appellant referred to the discharged debt at issue from PNC Bank as his "second mortgage." Yet, he provided nothing to show that the canceled debt was obtained and used for the purpose of acquiring, constructing, or substantially improving his principal residence. Appellant provided no evidence that his "second mortgage" was related to a refinance of qualified principal residence indebtedness. Conversely, the evidence presented on appeal shows that the debt canceled by Nationstar was expressly described as a "mortgage loan" debt, which appellant also excluded from his gross income. Neither the IRS nor the FTB adjusted appellant's gross income to include the Nationstar COD income. PNC Bank, however, describes appellant's discharged debt as a "consumer loan," not as a mortgage loan. Moreover, appellant

² For the 2013 taxable year, section 17024.5(a)(1)(O) provides that for Personal Income Tax Law purposes, California conforms to the January 1, 2009 version of the IRC. Thus, references herein to the IRC are to that version.

has not provided evidence showing the purpose or use of the PNC Bank loan proceeds. Appellant has not shown that he is entitled to exclude his PNC Bank COD income from his gross income.

Furthermore, under section 17072(a), California generally incorporates by reference IRC section 62, which defines adjusted gross income (AGI). Thus, a taxpayer’s California AGI starts with the same AGI amount reported on his or her federal return, subject to modifications based on applicable California-specific additions and subtractions.

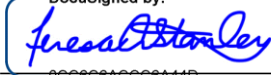
In the present case, appellant contends that he never agreed with the IRS redetermination of his 2013 gross income that was reported to FTB. However, the IRS Account Transcript shows that, as of April 25, 2018, the IRS had not modified the amount of additional tax assessed, which was based on appellant’s unreported COD income. Appellant has not provided evidence to contradict the federal adjustment or otherwise shown that it is in error. Accordingly, appellant has not carried his burden of proof.

HOLDING

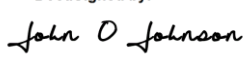
Appellant has not shown error in FTB’s proposed assessment, which is based on information received from the IRS.

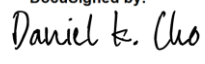
DISPOSITION

FTB’s proposed assessment is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Daniel K. Cho
Administrative Law Judge