

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042690
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FRANCIS G. SAFAR) Date Issued: January 30, 2019
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OPINION

Representing the Parties:

For Appellant: Francis G. Safar
For Respondent: Donna L. Webb, Staff Operations Specialist

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ Francis G. Safar (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$1,933 for the 2014 tax year.

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

ISSUE

Whether appellant has established error on the part of FTB in proposing to assess additional tax, pursuant to a federal assessment.

FACTUAL FINDINGS

1. For tax year 2014, appellant filed a California Tax Return, reporting federal adjusted gross income (AGI) of \$11,500, the standard deduction of \$3,992, taxable income of \$7,508, and tax of \$75. Appellant claimed one dependent exemption credit of \$333, resulting in zero tax due.

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

2. Subsequently, FTB received information from the Internal Revenue Service (IRS) showing that the IRS made adjustments to appellant's federal tax return for pension income of \$37,445, non-employee compensation of \$8,750, and a self-employment tax deduction of -\$618. The IRS also imposed a 10 percent early distribution tax on the pension income.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that applied the IRS income adjustments to appellant's 2014 California tax return. The NPA revised appellant's taxable income to \$53,085 and tax to \$2,447. The NPA assessed a 2.5 percent early distribution tax of \$1,050, and allowed a personal exemption credit of \$108, a dependent exemption credit of \$333, and California withholding credit of \$1,123, for proposed additional tax of \$1,933, plus applicable interest.
4. Appellant timely protested the NPA, and therein asserted that he qualified for an exception to the early distribution tax, and he asserted that he had already paid the state taxes at issue. FTB issued a Notice of Action affirming its NPA, and this timely appeal followed.
5. Subsequently, appellant provided additional information to FTB from the Employment Development Department, establishing that he qualified for an exception to the 2.5 percent early distribution tax. Accordingly, FTB concedes to cancel that tax and reduce the assessment by \$1,050.

DISCUSSION

Section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or to state where the changes are 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. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986.)²

The IRS provided FTB with an audit report that shows adjustments were made to appellant's 2014 federal tax return for unreported pension/annuity income and non-employee compensation, as well as a deduction for self-employment tax. The IRS information shows that the federal adjustments were not revised or cancelled, and are final. These adjustments also

² State Board of Equalization precedential opinions are viewable on BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

apply for state tax purposes,³ and FTB issued the NPA to make these adjustments to appellant's California taxable income. Appellant has provided no evidence or argument to establish that the adjustments are erroneous.

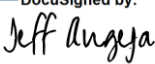
On appeal appellant asserts that he paid the applicable tax and provided a copy of his account transcript from the IRS for the 2014 tax year, which showed a zero-balance due as of September 18, 2017.⁴ It appears that appellant has confused a federal liability for his state liability, which are separate and independent from each other. As a result, although appellant's evidence establishes that he no longer had a balance due for his federal liability for the 2014 tax year, this evidence does not establish that his state tax liability was paid. Instead, after applying the federal adjustments to appellant's return, and allowing appellant's personal and dependent exemption credits totaling \$441 (\$108 + \$333), and applying appellant's California withholding credit of \$1,123, the NPA reflects additional tax due of \$1,933 (which FTB concedes to reduce to \$883). Thus, appellant's withholding and exemption credits have not paid the remaining tax due, and appellant has not provided any evidence to indicate that he made any other payments toward his California liability.

HOLDING

As previously agreed upon, appellant has established error in FTB's proposed assessment of the 2.5 percent early distribution tax of \$1,050; otherwise, appellant failed to establish error on the part of FTB in the remainder of the proposed assessment.

DISPOSITION

FTB's proposed assessment of additional tax is sustained in the reduced amount of \$883, plus interest.

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Jeffrey G. Angeja
Administrative Law Judge

³ California law conforms to federal law as to the taxation of pension/annuity income. With some modifications not applicable here, section 17085 conforms to Internal Revenue Code section 72, and requires inclusion in income of gross amounts received from annuities, including retirement plan distributions.

⁴ Appellant also asserts that he has financial difficulties and is unable to pay the additional tax. In its brief FTB advised appellant that such matters should be addressed to FTB's collection department, where appellant may wish to request an Offer in Compromise or a payment arrangement plan.

We concur:

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Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

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