

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042715
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MICHAEL A. WILDE) Date Issued: March 12, 2019
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OPINION

Representing the Parties:

For Appellant: Michael A. Wilde
For Respondent: Joel M. Smith, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ Michael A. Wilde (appellant) appeals an action by respondent Franchise Tax Board (FTB) on a proposed denial of appellant’s claim for refund of \$1,361.25 for the 2013 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 demonstrated error in the proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely 2013 California personal income tax return. On the return, appellant reported federal adjusted gross income (AGI) of \$137,922, California adjustments of \$23,730, itemized deductions of \$12,684, taxable income of \$101,508, and tax of \$4,565. After subtracting exemption credits of \$212 and withholding of

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

- \$6,800, appellant claimed an overpayment of \$2,447. FTB issued refunds totaling \$2,529.61.
2. During the 2013 tax year, appellant received a Form 1099-R from Edward D. Jones and Company (Edward Jones) in the amount of \$13,535. The 1099-R reflects “Code 4” indicating that the \$13,535 was income in respect of a decedent.² Appellant did not include this income in his 2013 federal AGI nor his California Schedule CA.
 3. Subsequently, under section 6103(d) of the Internal Revenue Code (IRC), FTB received federal information showing that the Internal Revenue Service (IRS) had adjusted appellant’s 2013 federal return to add unreported pension income of \$13,535. There is no evidence that the IRS cancelled or reduced its assessment.
 4. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) dated August 24, 2016, that added the \$13,535 of pension income to appellant’s California taxable income and proposed additional tax of \$1,259, plus accrued interest.
 5. The NPA required appellant to respond by October 24, 2016. In a letter dated November 9, 2016, appellant submitted an untimely protest of the NPA. Appellant asserted that the income reported on his federal tax return matched the income reported on his California tax return. Appellant also asserted that he did not see the NPA because he was outside of California for more than one year.
 6. Appellant paid the liability in the amount of \$1,361.25 (which amount reflects the additional tax of \$1,259, plus accrued interest) on January 3, 2017. As a result, FTB treated appellant’s letter dated November 9, 2016 as a claim for refund. FTB explained its position in a letter dated July 25, 2017, and after receiving no reply from appellant, FTB issued a letter dated September 12, 2017, denying the claim for refund.
 7. This timely appeal followed. On appeal, appellant contends that he did not receive FTB’s July 25, 2017 letter.

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

² Income in respect of a decedent generally refers to untaxed income which a decedent earned or had a right to receive during his or her lifetime.

proving that the determination is erroneous. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Hutchinson*, 82-SBE-121, June 29, 1982.)³ 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. Gross income includes income from a decedent. (IRC, § 61(a)(13).) Because of California’s conformity with IRC section 61, California residents who receive income from a decedent must include these amounts in taxable income for California purposes.

Here, it is undisputed that appellant was a California resident for the 2013 tax year, during which he received \$13,535 from Edward Jones in connection with a decedent. Appellant did not report that income on his federal or state income tax return. That income is subject to California income tax, and appellant does not argue to the contrary. Instead, appellant contends that he did not receive FTB’s July 25, 2017 letter explaining FTB’s position regarding appellant’s claim for refund. However, this contention, even if true, does not establish error in FTB’s determination, or that the pension income was not subject to California tax. Therefore, we conclude that FTB properly assessed additional tax based upon federal adjustments, and appellant has not established any error in FTB’s determination.

HOLDING

Appellant has not shown error in FTB’s determination or the federal adjustments upon which it is based.

DISPOSITION


FTB’s action is sustained.


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Jeffrey G. Angeja
Administrative Law Judge

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>>.

We concur:

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Amanda Vassigh
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge