

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18043047
RUSSELL K. JUSTUS)
) Date Issued: March 15, 2019
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OPINION

Representing the Parties:

For Appellant: Russell K Justus
For Respondent: Freddie C. Cauton, Legal Assistance

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Russell K. Justus (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,686.93 of additional tax and applicable interest for the 2012 tax year.

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

ISSUE

Has appellant shown error in respondent’s proposed assessment, which was based on a federal determination?

FACTUAL FINDINGS

1. Appellant filed a timely tax return (Form 540 2EZ) for taxable year 2012.
2. On June 22, 2018, the Internal Revenue Service (IRS) sent information to FTB showing that it had revised appellant’s reported adjusted gross income (AGI) of \$58,670, to \$89,784. The relevant adjustments included:
 - a. an increase of \$169 for unreported interest income (paid by Bank of America N.A.),
 - b. an increase of \$57 for unreported dividend income (paid by JPMorgan Chase & Co),

- c. an increase of \$116 for unreported taxable pension or annuity income (paid by JPMorgan Retirement Plan Services),¹ and
- d. an increase of \$15,386 for unreported “other income” income (paid by Davis V. JPMorgan Chase QSF).²

The unreported items of income were supported by a Wage and Income Transcript that FTB received from the IRS on June 25, 2018.

3. FTB issued to appellant a Notice of Proposed Assessment (NPA), which revised appellant’s taxable income by the same amount as the IRS increased it. After applying applicable exemptions and credits, the NPA proposed additional tax of \$1,686.93, plus interest.³
4. Appellant protested the NPA, asserting that \$15,386 “was not a pension,” and that it was “not true” that he “took an early withdrawal.” Appellant additionally asserted that his income was calculated incorrectly “using a higher percentage, not using personal income tax rate percentage.”
5. FTB responded to appellant’s protest in a letter dated April 11, 2017. FTB reiterated that information received from the IRS showed additional income that appellant had not claimed on his original tax return. Additionally, FTB explained that it used the “normal tax rate” and attached a calculation of appellant’s 2012 tax.⁴ FTB further explained that it had received no information showing that the IRS assessment was canceled or reduced, and therefore, it believed its NPA to be correct.
6. On March 12, 2018, FTB issued a Notice of Action affirming its NPA.
7. On April 11, 2018, appellant filed this timely appeal, asserting that “[he does] not owe this amount you have been paid.”

¹ \$111 of this income was reported as a dividend distribution from an ESOP under sec. 404(k) (distribution code U), and \$5 was reported as a designated Roth IRA account distribution (distribution code B).

² The form reflecting the IRS information listed the “other income” reported on a 1099-MISC as an “award.” The income amount is equivalent to, and is in addition to, separate wage income reported on a W-2. Appellant did not dispute the accuracy of the IRS Wage and Account Transcript, and we find that Davis V. JPMorgan Chase QSF paid appellant two equal payments of \$15,386, each.

³ Due to adjustments (increases) to appellant’s income, FTB disallowed a California renter’s credit that appellant had claimed.

⁴ The calculation provided by FTB shows that tax was calculated using the tax rate table, which provides for \$2,433.80 tax on appellant’s income not exceeding \$66,618. For the portion of appellant’s income exceeding \$66,618, FTB used a 9.3% taxation rate.

8. An IRS Account Transcript, dated June 25, 2018, shows that the IRS did not amend or reduce its assessment of additional tax. It shows that appellant entered into an installment agreement to pay off his 2012 tax liability, and that appellant was making regular, monthly payments.

DISCUSSION

R&TC section 18622, subdivision (a), provides that taxpayers shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett*, 86-SBE-109, June 18, 1986.)⁵

Here, FTB has proposed an assessment of additional tax based on an increase in appellant's federal adjusted gross income, as reported by the IRS. The federal adjustment is based on income not included in appellant's return, which included \$169 reported on a Form 1099-INT, \$57 reported on a Form 1099-DIV, \$111 reported on Form 1099-R, \$5 reported on another Form 1099-R, \$15,386 reported on a Form 1099-INT, and an additional \$15,386 reported on a Form W-2, all of which were issued to appellant for the year at issue. Appellant has the burden of proving error in FTB's proposed assessment, or error in the federal adjustment upon which it is based.

Appellant's contention when he first protested FTB's determination was that he had not taken an early withdrawal of a pension. Because one of the increases in appellant's income was listed as "pensions/annuities," and was reported on 1099-R (distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc.), it appears appellant mistakenly believed he was being taxed on a pension or other retirement withdrawal. In reality, both appellant's ESOP and IRA made taxable dividend distributions in 2012. Only the amounts of the dividends were taxed, and there is no indication in the record that appellant was taxed on any pension withdrawal.

Appellant further claimed in his protest that FTB miscalculated the tax on his income by "using a higher percentage, not using personal income tax rate percentage." FTB responded by showing appellant how it had calculated tax on his earnings using the amounts and percentage

⁵ Precedential opinions of the State Board of Equalization (BOE) may be found on BOE's website at <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

taken from the 2012 tax table. There is nothing in the record to suggest that FTB miscalculated the amount of appellant's tax liability.

On appeal, appellant simply stated that FTB had already been paid. It is unclear whether appellant believes that the tax amount he initially reported was correct, or whether appellant is confusing the IRS with FTB. Appellant has been making regular payments toward his 2012 IRS tax liability, but has not made payments to FTB. Either way, appellant has not shown that he paid FTB the full amount of tax he owes for 2012.

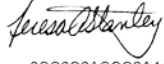
The federal adjustment which imposed additional tax based on appellant's unreported income has not been subsequently revised. On the contrary, appellant entered into an installment agreement and has been regularly making payments on his re-determined federal tax liability. Accordingly, appellant has not shown error in the federal adjustment, and he has not shown error in FTB's proposed assessment, which is based on that federal adjustment.

HOLDING

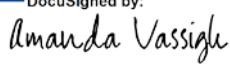
Appellant has not shown error in FTB's proposed assessment or the federal determination upon which it is based.

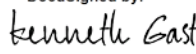
DISPOSITION

FTB's proposed assessment for the 2012 tax year is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge