

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18053098
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JESUS ACOSTA) Date Issued: February 27, 2019
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OPINION

Representing the Parties:

For Appellant: Jesus Acosta, Taxpayer

For Respondent: Freddie C. Cauton, Legal Assistant

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045 appellant appeals an action by respondent Franchise Tax Board (FTB) proposing \$276 in additional tax, plus applicable interest, for the 2013 tax year. This matter is being decided based on the written record because appellant did not ask for an oral hearing, and the right was therefore waived.

ISSUE

Whether appellant established error in FTB’s proposed assessment for 2013, which is based on a final federal determination.

FACTUAL FINDINGS

1. On February 15, 2014, appellant timely filed a 2013 California Resident Income Tax Return (Form 540), reporting \$28,144 in federal adjusted gross income (AGI), less a California adjustment of \$2,469 for unemployment compensation. Appellant also timely filed a federal tax return for 2013, reporting \$28,144 in federal AGI.
2. Subsequently, on or around May 2, 2016, the Internal Revenue Service (the IRS) made a correction to appellant’s federal AGI, and increased it by \$6,788, for a corrected federal AGI of \$34,932. The federal correction was based on Forms 1099-C, Cancellation of

Debt, issued by various credit card companies to appellant, collectively reporting \$6,788 in credit card debt discharged during 2013. Appellant had not reported any cancellation of debt income on his state or federal tax returns for 2013.

3. On April 13, 2017, FTB issued a Notice of Proposed Assessment (NPA) proposing to make the same adjustment to income at the state level, that the IRS made at the federal level.
4. On April 15, 2017, appellant responded to the NPA by furnishing a copy of a monthly billing statement from the IRS, indicating that appellant was paying off the deficiency determined in his federal tax liability for 2013 on an installment basis, and that his next monthly installment payment, in the amount of \$200, was due on January 15, 2017. The statement reflected a remaining balance of \$298.85. In his protest with FTB, appellant stated that he paid the balance in full to the IRS. In support, appellant attached a copy of a check payable to the United States Treasury, in the amount of \$298.95, with “paid in full TX YR 2013” written on the check.
5. FTB issued a Notice of Action (NOA) denying the protest on April 13, 2018, on the basis that payments to the IRS had no bearing on the NPA because the IRS and FTB are two separate agencies.
6. Appellant timely appealed the NPA on April 27, 2018, on the basis that he already paid the liability to the IRS. In support, appellant attached a document titled “Annual Installment Agreement Statement” from the IRS, reflecting his monthly payments to the IRS for taxes owed for the 2012 and 2013 tax years, and showing a zero balance as of September 14, 2017, for those tax years. Appellant also stated that he is currently unemployed and requests that any amount still owing be forgiven, because he has no means to pay the proposed liability.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (Int.Rev. Code, § 61(a); R&TC, §§ 17071.) The discharge of indebtedness constitutes gross income of a taxpayer in the year the taxpayer’s debt is forgiven. (Int.Rev. Code, § 61(a)(11).) California generally conforms to federal law with respect to the determination of whether cancellation of debt income exists, and there is no exclusion from gross income under state or federal law for cancellation of credit card debt income. (Int.Rev. Code, § 108; R&TC,

§§ 17071, 17144.5.) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke*, 80-SBE-059, May 21, 1980; *Appeal of J. Walshe and M. Walshe*, 75-SBE-073, Oct. 20, 1975.)¹ If the IRS makes a change or correction to any item of gross income or deduction (federal change), the taxpayer must report the federal change to FTB within six months after the date of each final federal determination related thereto, and shall concede the accuracy of the final federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) An NPA issued by FTB based on such a final federal determination is presumed correct, and the taxpayer bears the burden of proving error. (*Appeal of S. Brockett and H. Brockett*, 86-SBE-109, June 18, 1986.)

Here, FTB issued the NPA based on a final federal determination that appellant failed to report \$6,788 in cancellation of credit card debt income during 2013. Cancellation of credit card debt is treated as income, and the same rules apply for state and federal tax purposes. The IRS determined the amount of additional income based on Forms 1099-C that the respective credit card companies furnished to appellant and to the IRS. FTB proposes to assess state tax based on making the same changes at the state level, that the IRS made at the federal level. Appellant does not dispute that the credit card companies cancelled his credit card debt during 2013, or contend that the federal determination is otherwise erroneous. Further, there is no evidence to suggest that FTB's proposed assessment, which is based on the federal changes, is incorrect. Based on the above, we find that appellant failed to establish error in FTB's proposed assessment.

Appellant separately contends that he is unable to pay the liability and requests that it be forgiven. FTB has statutory authority to settle disputed liabilities with taxpayers, and to compromise certain final liabilities. (R&TC, §§ 19442, 19443.) The Office of Tax Appeals, on the other hand, has no statutory authority to settle or compromise a tax liability. Further, we have no jurisdiction over FTB's settlement or offer in compromise programs, and we express no opinion as to whether appellant qualifies for either program. Our function is to determine the correct amount of the taxpayer's California income tax liability. (*Appeals of Fred R. Dauberger, et al.*, 82-SBE-082, Mar. 31, 1982.)

¹ Precedential decisions of the State Board of Equalization, designated by "SBE" in the citation, are available on that board's website at <www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

While a taxpayer's financial situation may ultimately render a liability uncollectible, the issue of ability to pay versus that of determining the correct amount of tax are two separate and distinct issues. We lack authority to forgive a liability or make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal of Estate of R. Luebbert, Deceased, and V. Luebbert*, 71-SBE-028, Sept. 13, 1971.)

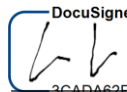
Therefore, based on the evidence presented to us, appellant failed to establish a basis upon which we can make any adjustments to the proposed assessment.

HOLDING


Appellant failed to establish error in FTB's proposed assessment.

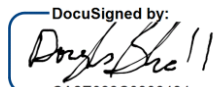
DISPOSITION

FTB's action is sustained.

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:

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Teresa Stanley
Administrative Law Judge

DocuSigned by:

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Douglas Bramhall
Administrative Law Judge