

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18053105  
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**MICHAEL A. GEFFENEY** ) Date Issued: February 25, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Michael A. Geffeny  
For Respondent: Freddie C. Cauton, Legal Assistant

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Michael Geffeny (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in proposing to assess additional tax of \$608 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 established error on the part of FTB in proposing to assess an early distribution tax, pursuant to a federal assessment.

**FACTUAL FINDINGS**

1. For tax year 2014, appellant and his spouse filed a California Resident Income Tax Return, Form 540EZ, reporting wages and total income of \$34,451, tax of \$0.00, and an overpayment of \$235 that FTB refunded to appellant.
2. Subsequently, under authorization of section 6103(d) of the Internal Revenue Code (IRC), FTB received information from the Internal Revenue Service (IRS) that showed

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

appellant and his spouse had underreported their income on their 2014 federal return. The IRS made adjustments to the federal return to add previously unreported wages of \$4,358 and pension/annuity income of \$24,324.<sup>2</sup> In addition, the IRS assessed an early distribution tax of \$2,432.

3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that applied the IRS income adjustments to appellant and his spouse's 2014 California tax return, and proposed an early distribution tax of \$608, computed at 2.5 percent of appellant's aggregate pension/annuity income of \$24,324.<sup>3</sup>
4. Appellant timely protested the NPA and therein asserted that the applicable California tax had been withheld from the pension withdrawal. Appellant also appears to assert that the applicable statute of limitations expired, preventing FTB from timely issuing the NPA.<sup>4</sup>
5. In reply, FTB provided appellant with copies of the IRS information, showing details of the IRS adjustments for tax year 2014. That information included appellant's Wage and Income Transcript from the IRS, which shows that while federal tax was withheld from appellant's pension/annuity distributions, no state taxes were withheld. The transcript also reflects that the federal assessment has been paid in full, the IRS has not cancelled or reduced it, and it is final.
6. FTB issued a Notice of Action (NOA) affirming its NPA, and this timely appeal followed.

### 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-

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<sup>2</sup> The IRS also made an adjustment for appellant's unreported unemployment compensation of \$3,369, but FTB did not include this adjustment because unemployment compensation is not subject to California tax.

<sup>3</sup> Only the early distribution tax is at issue in this appeal since the other adjustments did not generate a California income tax liability for appellant.

<sup>4</sup> Section 19057(a) states in relevant part that an NPA shall be mailed within four years after the return was filed. Here, appellant filed his return on May 6, 2015, and FTB issued the NPA on April 12, 2017, which is less than two years from the filing of appellant's return. Accordingly, FTB's NPA was timely issued and we need not further address this contention.

SBE-109, June 18, 1986; *Appeal of Lew*, 78-SBE-073, Aug. 15, 1978; *Appeal of Webb*, 75-SBE-061, Aug. 19, 1975.)<sup>5</sup>

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 as well as an early distribution tax. These adjustments also apply for state tax purposes, and FTB issued the NPA to make these adjustments to appellant's California taxable income.

In this specific matter, California law conforms to federal law as to the taxation of pension/annuity income. Section 17085 conforms to IRC section 72, with some modifications not applicable here, and requires inclusion in income of gross amounts received from annuities, including retirement plan distributions, and imposes an early distribution tax. Although section 17085 conforms to federal law, it also modifies IRC section 72 with respect to the early distribution tax rate. IRC section 72(t)(1) provides that if a taxpayer receives an amount from a qualified retirement plan, the taxpayer's federal tax shall be increased by an amount equal to 10 percent of the portion that is includible in gross income. For California purposes, section 17085(c)(1) reduces the percentage to 2.5 percent of the includible amount received.

FTB obtained appellant's Wage and Income Transcript from the IRS. The Wage and Income Transcript reflects that pension/annuity distributions totaling \$24,324 received in 2014 were early distributions with no known exceptions to the additional tax. Consequently, FTB properly imposed an additional 2.5 percent tax on the early distribution in the amount of \$608 (\$24,324 x 2.5 percent).

While appellant asserts that the applicable state tax was withheld from the early distributions, appellant has offered no evidence to support his assertion and the IRS information establishes that no state taxes were in fact withheld. Additionally, appellant has offered no evidence to show error in the above federal adjustments or in FTB's application of those adjustments to appellant's 2014 California income and tax liability.

#### HOLDING

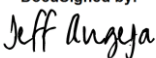
Appellant failed to establish error on the part of FTB in its proposed assessment of an early distribution tax on the 2014 distribution.

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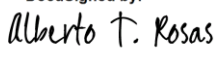
<sup>5</sup> State Board of Equalization precedential opinions are viewable on BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

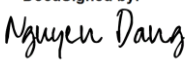
DISPOSITION

Respondent's action is sustained.

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Jeffrey G. Angeja  
Administrative Law Judge

We concur:

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Alberto T. Rosas  
Administrative Law Judge

DocuSigned by:  
  
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Nguyen Dang  
Administrative Law Judge