

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

MICHELE DECOSTA

) OTA Case No. 18010978
)
) Date Issued: March 27, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Michele DeCosta

For Respondent: Donna L. Webb, Staff Operation Specialist

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Michele DeCosta (appellant) appeals an action by respondent Franchise Tax Board (FTB) affirming its proposed assessment of \$351 in additional tax for the 2013 tax year.

This appeal is being decided based on the written record because appellant waived her right to an oral hearing.

ISSUE

Whether appellant is required to recognize \$3,998 of discharge of indebtedness income for the 2013 tax year.

FACTUAL FINDINGS

1. Sometime in 2004, appellant incurred (that is, the debt was incurred in her name only) a \$5,000 liability (the liability or debt).
2. Appellant entered into a registered domestic partnership on December 13, 2004.
3. Pursuant to a 2010 stipulated judgment dissolving appellant’s registered domestic partnership, payment responsibility for the liability was assigned to appellant’s former partner as her sole and separate obligation.

¹ All undesignated statutory references are to sections of the Revenue and Taxation Code.

4. When appellant's former partner failed to pay the liability, it was eventually assigned to Midland Credit Management, Inc. (MCM), a debt collection agency.
5. In 2013, appellant's former partner settled the liability with MCM for \$3,998 less than the outstanding amount due.
6. Via letter dated June 24, 2013, MCM informed appellant that the liability had been fully satisfied.
7. Appellant timely filed her 2013 California Resident Income Tax Return, reporting taxable income of \$66,128 and total tax of \$2,343.
8. Thereafter, FTB received information that the Internal Revenue Service (IRS) increased appellant's adjusted gross income (AGI) by \$3,988, based on a Form 1099-C issued to appellant in 2013, listing her as the sole debtor and indicating that she received a discharge of debt for that same amount from MCM.
9. Based on the IRS information, FTB issued to appellant a Notice of Proposed Assessment (NPA), applying the \$3,988 federal adjustment to appellant's 2013 tax return, resulting in additional tax of \$351.
10. Appellant protested the NPA, disputing the accuracy of the federal adjustment.
11. FTB issued to appellant a Notice of Action affirming the NPA, and this timely appeal followed.

DISCUSSION

Section 18622 requires taxpayers to concede the accuracy of the federal changes or state wherein the adjustments are erroneous. It is well-settled that a deficiency assessment based upon a federal adjustment to income is presumptively correct, and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986; *Appeal of Hutchinson*, 82-SBE-121, June 29, 1982.)² Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

Under Internal Revenue Code (IRC) section 61(a)(12), a taxpayer who is liable for a debt generally must include in gross income any amounts pertaining to that debt which are forgiven or discharged, in the year in which that event occurs. This same rule is applicable for state income tax purposes as well, as California incorporates by reference IRC section 61 in defining gross

² Published decisions of the State Board of Equalization, designated as "SBE" in the citation, are generally available for viewing on the Board's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

income. (§ 17071.) “The underlying rationale for such inclusion is that to the extent a taxpayer is released from indebtedness, he or she realizes an accession to income due to the freeing of assets previously offset by the liability.” (*Jelle v. Commissioner* (2001) 116 T.C. 63, 67.)

Here, the liability was reduced by \$3,998 in 2013, as confirmed by the Form 1099-C issued by MCM to appellant. This form listed appellant as the sole debtor, and appellant does not dispute that she was solely liable for the debt at the time it was incurred. This forgiveness of \$3,998 in debt is generally includible as income under Section 17071. Appellant does not provide any arguments or evidence establishing any statutory exemption from the general rule above. Instead, appellant contends that because the liability was “assumed” by her former partner during the dissolution of her domestic partnership, she was relieved of personal liability for that debt. Consequently, appellant argues that she is not required to recognize any discharge of indebtedness income.

Appellant’s position is contrary to statutory law. In California, a person remains personally liable for a debt incurred by the person before or during the marriage, whether or not the debt was assigned for payment by the person’s spouse following a dissolution of the marriage. (Cal. Fam. Code, § 916(a)(1).) This applies to registered domestic partners as well, who are “subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.” (Cal. Fam. Code, § 297.5(a).) Thus, while the dissolution of appellant’s domestic partnership entitled her to indemnification from her partner with respect to the liability (i.e., appellant’s partner was required to reimburse appellant for this liability), it did not relieve appellant of personal liability for this debt. (*Jensen v. Commissioner*, T.C. Memo. 2010-77.) That personal liability for the debt was not transferred from appellant to her partner is further evidenced by the Form 1099-C issued by MCM, listing appellant as the sole debtor. Therefore, because appellant remained personally liable for this debt while MCM held the note, any subsequent discharge of indebtedness income, including the instant \$3,998 forgiveness, was properly attributable to her.

HOLDING

Appellant must recognize \$3,998 of discharge of indebtedness income for the 2013 tax year.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Nguyen Dang
4D465973FB44469...

Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...

Tommy Leung
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
2281E8D466014D1...

Alberto T. Rosas
Administrative Law Judge