

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18042794
JOHN SANDS AND LORENA SANDS)
) Date Issued: April 24, 2019
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OPINION

Representing the Parties:

For Appellants: John Sands and Lorena Sands

For Respondent: David Kowalczyk, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, John Sands and Lorena Sands (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$735 of additional tax, plus applicable interest, for the 2013 taxable year.

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

ISSUE

Have appellants shown error in FTB’s proposed assessment, which is based on a final federal determination?

FACTUAL FINDINGS

1. Appellants filed their 2013 California Resident Income Tax Return (Form 540), reporting federal adjusted gross income (AGI) of \$150,342, California adjustments of \$1,699, California AGI of \$148,643, itemized deductions of \$40,464, and taxable income of \$108,179, for a total tax liability of \$5,186. After applying exemption credits of \$1,516 and California income tax withheld of \$3,207, appellants reported tax due of \$463.

2. Appellants received a Form 1099-Miscellaneous (1099-MISC) from JPMorgan Chase Bank, N.A. (Chase Bank), for the 2013 taxable year, reporting box three “other income” in the amount of \$7,751.
3. FTB received information from the Internal Revenue Service (IRS) of federal adjustments made to appellants’ 2013 federal tax return. The federal adjustments increased appellants’ federal AGI from \$150,342 to \$158,093, for the \$7,751 reported on the Form 1099-MISC. The federal adjustments also included an adjustment of \$155 in disallowed itemized deductions.¹
4. Based on the information provided by the IRS, FTB made corresponding adjustments to appellants’ 2013 account and issued a Notice of Proposed Assessment (NPA). The NPA increased appellants’ taxable income by \$7,906 from \$108,179 to \$116,085. The NPA proposed additional tax of \$735, plus applicable interest.
5. Appellants protested the NPA by letter dated May 9, 2017, contending that the Form 1099-MISC income was a nontaxable refund of after-tax monies paid to Chase Bank for a home loan modification. They claim it was included on their return and then subtracted out because it was nontaxable.
6. On December 4, 2017, FTB issued a position letter in reply, contending that its NPA was correct because the adjustments were made based on federal information, and that it received no information that the IRS cancelled or reduced its assessment. FTB stated that if appellants disagreed with the NPA, they would need to resolve the issue with the IRS because California law is the same as federal law for the issues involved. FTB gave appellants until January 8, 2018, to provide a revised IRS report or any additional information for FTB to consider before it affirmed the NPA.
7. Appellants did not respond to the letter, and FTB issued a Notice of Action affirming the NPA on January 17, 2018. This timely appeal followed.
8. The Office of Tax Appeals scheduled a telephone conference with FTB and appellants to determine whether appellants could produce evidence supporting their position that the Form 1099-MISC income was for a “refund of overcharge[d] loan modification fees,” and was therefore nontaxable. Appellants did not participate in the conference, and no further documents were submitted.

¹ Appellants do not dispute the disallowance of the itemized deductions.

DISCUSSION

A taxpayer must either concede the accuracy of a final federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) R&TC section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. R&TC section 17071 incorporates Internal Revenue Code section 61, which defines “gross income” as including “all income from whatever source derived.” Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Walshe* (75-SBE-073) 1975 WL 3557.) It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeals of Magidow* (82-SBE-274) 1982 WL 11930.)

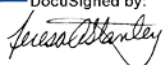
Here, FTB proposed an assessment of additional tax based on an increase in appellants’ federal AGI as determined by the IRS. The federal adjustment is based on income received by appellants and reported on a Form 1099-MISC issued for the year at issue. Appellants have the burden to prove error in FTB’s proposed assessment, or in the federal adjustment upon which it is based. Appellants assert that they disagree with the proposed assessment. They contend that the Form 1099-MISC “other income” was a nontaxable refund of overpaid mortgage loan modification fees. However, appellants have provided no evidence to support that contention. Appellants also contend that they accepted the IRS adjustments because they did not understand the adjustments, that they paid the additional federal taxes before they realized the error, and now that the statute of limitations has passed, they cannot adjust the IRS determination. FTB provided a copy of appellants’ 2013 federal account transcript which shows that the federal adjustments upon which the NPA was based have gone final and have been paid by appellants. Despite being given more than one opportunity to do so, appellants’ only evidence consists of a copy of the Form 1099-MISC from Chase Bank. Appellants have offered nothing other than unsupported assertions that the unreported income from Chase Bank was nontaxable income.

HOLDING


Appellants have not established error in FTB's proposed assessment, which is based on a final federal determination.

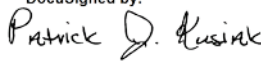
DISPOSITION

FTB's proposed assessment for the 2013 tax year is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:

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Patrick J. Kusiak
Administrative Law Judge