



## FACTUAL FINDINGS

1. Appellants filed a timely 2013 California Resident Income Tax Return. On the return, appellants reported federal adjusted gross income (AGI) of \$174,000, which included wages of \$107,228, \$65,815 of pension income, “other income” of \$803, and taxable refunds of \$154. Appellants’ federal AGI of \$174,000 did not include \$116,340 in cancellation of debt income. Appellants excluded this \$116,340 amount from their federal AGI on the ground that it arose from the cancellation of qualified principal residence indebtedness.<sup>4</sup>
2. Appellants’ California tax return started with the \$174,000 federal AGI amount, which excluded the \$116,340 in cancellation of debt income. However, on Schedule CA, appellants also subtracted the \$116,340 amount from the federal AGI amount in order to determine their California AGI. This subtraction, together with other Schedule CA adjustments, reduced appellants’ reported California AGI from the federal AGI amount of \$174,000 to \$56,703.
3. FTB issued a Notice of Proposed Assessment (NPA) that proposed to disallow the \$116,340 amount that appellants subtracted on their California Schedule CA. The NPA proposed to disallow the subtraction of the \$116,340 amount from appellants’ California AGI because this amount had already been excluded from appellants’ federal AGI.
4. Following protest proceedings, FTB affirmed its NPA in a Notice of Action dated December 8, 2017.
5. Appellants then filed this timely appeal.

## DISCUSSION

In general, gross income includes all income. (Internal Revenue Code (IRC), § 61.)<sup>5</sup> Subject to exceptions, where a taxpayer owes money and the debt is forgiven, the amount forgiven is included in the calculation of gross income. (IRC, § 61(a)(12).) For the tax year at issue, one of the exceptions to this general rule is that, in some circumstances, the cancellation or

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<sup>4</sup> As discussed later in this opinion, for the tax year at issue, income from the cancellation or forgiveness of debt on a principal residence could, in some circumstances, be excluded from California taxable income.

<sup>5</sup> California generally conforms to IRC section 61 pursuant to R&TC section 17071.

forgiveness of debt on a principal residence could be excluded from income.  
(IRC, § 108(a)(1)(E); R&TC, § 17144.5.)

Here, FTB and appellants agree that the \$116,340 amount may be excluded from income. Appellants appear to believe that FTB proposes to tax the \$116,340 of cancellation of debt income. However, this is not the case. FTB's proposed assessment does not seek to tax the \$116,340 of cancellation of debt income.

With regard to the \$116,340 of cancellation of debt income, appellants already excluded this amount from their federal AGI, and FTB's proposed assessment reflects this exclusion because it uses appellants' federal AGI as its starting point to calculate the tax due. Thus, FTB's proposed assessment does not tax the \$116,340 of cancellation of debt income.

However, FTB's proposed assessment does not allow appellants to both exclude the \$116,340 from their taxable income and also use this same amount to reduce their taxable income from other sources. If this were allowed, it would double count the \$116,340 amount by first excluding it from income and then also subtracting it to reduce appellants' income from other sources. In other words, the \$116,340 amount would not only be exempted from tax (which is proper and which FTB's proposed assessment would allow), it would also exempt other income, such as wage income, from tax (which would be improper and which FTB's proposed assessment does not allow). Therefore, FTB's proposed assessment allows the \$116,340 amount to be excluded from appellants' income, but it does not allow this same amount to also be deducted from appellants' income. Accordingly, FTB's proposed assessment is correct.<sup>6</sup>

#### HOLDING

FTB correctly disallowed a \$116,340 subtraction claimed by appellants on their Schedule CA for the 2013 year.

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<sup>6</sup> When this appeal becomes final, appellants may, if they wish, contact FTB to obtain information about whether they might be eligible for an Offer in Compromise or an Installment Agreement. (See <<https://www.ftb.ca.gov/individuals/unable-to-pay.shtml>>.)

DISPOSITION

FTB's action is sustained.

DocuSigned by:  
*Grant Thompson*  
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Grant S. Thompson  
Administrative Law Judge

We concur:

DocuSigned by:  
*Richard Tay*  
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Richard Tay  
Administrative Law Judge,  
on behalf of Douglas Bramhall  
Administrative Law Judge

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge