

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
GREGORY S. POOLE

) OTA Case No. 18053117
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) Date Issued: May 7, 2019
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OPINION

Representing the Parties:

For Appellant: Gregory S. Poole

For Respondent: Andrew Amara, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19047, Gregory S. Poole (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,112 of additional tax and applicable interest for the 2012 tax year. Appellant failed to return a Response to Notice of Oral Hearing dated January 4, 2019, or otherwise confirm his attendance to an oral hearing. Therefore, appellant waived his right to an oral hearing, and the matter is being decided based on the written record.

ISSUE

Whether appellant has established that FTB erred in its proposed assessment of additional tax for the 2012 tax year based on a federal determination.

FACTUAL FINDINGS

1. Appellant timely filed a 2012 California income tax return, reporting a federal adjusted gross income of \$31,429 and a California taxable income of \$23,747.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) that appellant’s federal income tax return was adjusted. Specifically, the IRS disallowed a \$50,000 claimed alimony deduction, which resulted in an increased federal adjusted gross income of \$81,429 (\$31,429 + \$50,000).

3. Based on the federal adjustment, FTB issued a Notice of Proposed Assessment (NPA) on November 14, 2016, which increased appellant's California taxable income by the \$50,000 disallowed deduction from \$23,747 to \$73,747. This resulted in an additional California tax of \$2,112, plus applicable interest.
4. By letter dated January 10, 2017, appellant protested the NPA and stated that he was communicating with the IRS and attempting to resolve the federal adjustment to his 2012 tax year. Accordingly, appellant requested that FTB defer any action on his account.
5. FTB responded by letter dated June 29, 2017, stating that the NPA was based on federal information received from the IRS and that the information does not show that the federal adjustment was canceled or reduced. FTB provided appellant an opportunity to respond to the letter by July 31, 2017.
6. By letter dated July 30, 2017, appellant reiterated his contentions that he was currently working with the IRS to resolve his federal adjustment and requested that FTB defer any action on the proposed assessment.
7. By Notice of Action dated November 28, 2017, FTB affirmed the November 14, 2016 NPA.
8. This timely appeal followed.
9. FTB requested appellant's federal account transcript on July 12, 2018. The federal account transcript does not indicate that the IRS canceled the disallowed claimed deduction or otherwise reduced appellant's adjusted gross income of \$81,429.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal change to a taxpayer's income or to state where the change is 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. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986.)

Generally, California conforms to the definition of "gross income" contained in section 61 of the Internal Revenue Code (IRC). (See R&TC, § 17071.) Gross income is defined as "all income from whatever source derived," unless specifically excluded. (IRC, § 61(a).) Alimony is

deductible from the payor spouse's income. (IRC, § 215.)¹ However, deductions are a matter of legislative grace, and taxpayers bear the burden of proving entitlement to a deduction. (*New Colonial Ice Co., Inc. v. Helvering* (1934) 292 U.S. 435.)

Here, FTB received information from the IRS that appellant's \$50,000 claimed deduction for alimony payments was disallowed, which increased appellant's federal adjusted gross income by the disallowed amount. Based on this information, FTB increased appellant's federal adjusted gross income as reported on his California income tax return by the disallowed amount, which resulted in an increase to appellant's California adjusted gross income and taxable income.

Although appellant has argued that he has been trying to resolve the disallowed claimed deduction with the IRS since at least January 2017, appellant has not provided any evidence that the IRS canceled the disallowed deduction or reduced appellant's adjusted gross income to the date of this decision, which represents a period of over two years. Furthermore, FTB obtained appellant's federal account transcript on July 12, 2018, which did not show any cancellations or reductions to the IRS's disallowance of the claimed deduction. Lastly, appellant has not provided any argument or evidence that he would be entitled to a deduction of \$50,000 for alimony payments. For example, he has not provided a divorce decree that outlines his obligation to make alimony payments to a former spouse or any evidence of such payments. Therefore, we find that appellant has not met his burden of proof that FTB's proposed assessment was erroneous.

HOLDING

Appellant has not established error in FTB's proposed assessment of additional tax for the 2012 tax year based on a federal determination.


DISPOSITION


FTB's proposed assessment for the 2012 tax year is sustained.

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Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

¹ California conforms to IRC section 215 pursuant to R&TC section 17201.

We concur:

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Linda C. Cheng
Administrative Law Judge

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Douglas Bramhall
Administrative Law Judge