

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

In the Matter of the Appeal of:  
**KEITH J. SPICER**

) OTA Case No. 18063361  
)  
) Date Issued: May 7, 2019  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: Keith J. Spicer

For Respondent: Donna L. Webb, Staff Operations Specialist

M. GEARY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, appellant Keith J. Spicer appeals an action by Respondent Franchise Tax Board (FTB) proposing \$2,127 of additional tax, plus interest, for the 2014 tax year.

Appellant waived his right to an oral hearing. Therefore, we decide the matter based on the written record.

**ISSUE**

Is appellant entitled to a reduction of the proposed assessment for the 2014 taxable year?

**FACTUAL FINDINGS**

1. Appellant and his spouse timely filed a joint California Resident Income Tax Return (FTB Form 540), reporting federal adjusted gross income of \$131,788, itemized deductions totaling \$24,922, taxable income of \$106,866, and tax of \$4,956.<sup>1</sup> After applying exemption credits of \$1,215 and a California withholding credit of \$1,895,

---

<sup>1</sup> Appellant filed this appeal in his name only. There will be instances in this Opinion when our reference to “appellant,” though singular in form, will be a reference to both appellant and his spouse, such as when we refer to “appellant’s” return or tax liability.

- appellant and his wife reported \$1,846 of tax due, which they paid by an offset against their federal refund.
2. After appellant filed the return, FTB received information from the Internal Revenue Service (IRS) about adjustments the IRS had made to appellant's income: increases for \$20,794 of unreported distribution of pension income (and the imposition of a 10-percent premature pension distribution tax), a disallowed student loan interest deduction of \$526, and a disallowed miscellaneous deduction of \$426.
  3. Based on the information received from the IRS, as noted above, on October 31, 2017, FTB mailed to appellant a Notice of Proposed Assessment of additional tax of \$2,127 (including the premature distribution tax) and interest.
  4. Appellant filed his timely protest, which indicates appellant believed he was addressing the IRS<sup>2</sup> and states that he was unable to access the relevant paperwork but believed he had already paid the tax that was due.
  5. By letter dated March 29, 2018, FTB acknowledged appellant's protest and explained that, while the subject liability is based on information provided by the IRS to FTB, the proposed assessment is by FTB, not by the IRS. The letter informed appellant that if he believed the federal adjustment was incorrect, he should contact the IRS to resolve the matter, and that if the IRS cancelled or reduced its assessment, FTB would adjust its proposed assessment as appropriate. The letter also requested a response from appellant no later than April 30, 2018. FTB included with the letter a copy of the IRS information provided to FTB.
  6. After appellant did not respond by the due date, FTB issued a May 30, 2018 Notice of Action affirming its proposed assessment of \$2,127 in additional tax, plus interest. This timely appeal followed.

### DISCUSSION

California imposes a tax upon the entire taxable income of every resident of this state. (R&TC, § 17041.) Every individual subject to the personal income tax must file a return with FTB reporting the individual's gross income from all sources, as well as allowable deductions and credits. (R&TC, § 18501.) R&TC Section 18622 states a taxpayer shall either concede the

---

<sup>2</sup> Both the protest and the appeal to the Office of Tax Appeals begin, "Dear IRS."

accuracy of a federal determination or state how it is wrong. We presume a deficiency determination based on a federal assessment is correct, and a taxpayer bears the burden of proving otherwise. (*Appeal of Sheldon I. and Helen E. Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Barbara P. Hutchinson* (82-SBE-121) 1982 WL 11798.) Unsupported assertions are not enough to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.)

There appears to be no dispute regarding the accuracy of the federal adjustments. At least, appellant has made no argument and provided no evidence to dispute them. On that basis, we must conclude that the adjustments are correct.

Appellant does not argue, and he has given us no evidence to show, that FTB incorrectly calculated the tax based on the federal adjustments, and we find no error in the calculation. Consequently, we find that FTB correctly calculated the additional tax due.

It appears that appellant is confused regarding the tax (and the taxing authority) involved in this appeal. His sole argument appears to be that he has already resolved this matter with the IRS. While the documents provided by FTB indicate that only a small amount remained due for appellant's federal tax liability for 2018 as of August 14, 2018, the liability that is the subject of this appeal is for California income taxes, not federal income taxes. The transcript for appellant's federal tax account indicates no changes to the federal adjustments that caused the state tax increase at issue. Based on the evidence we find that appellant is liable for the assessed tax, plus interest.

#### HOLDING

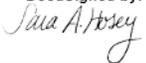
Appellant is not entitled to a reduction of the proposed assessment, based on federal adjustments, for the 2014 taxable year.

DISPOSITION

We sustain FTB's action.

DocuSigned by:  
  
1A9B52FE88AC2C7  
Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
  
6D3FE4A0CA514E7...  
Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
  
8B585BFAC08946D...  
Linda A. Cheng  
Administrative Law Judge