

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18043032
JONATHAN W. BIRDT AND)	Date Issued: June 21, 2019
JULIE P. BIRDT)	
)	
)	
)	

OPINION

Representing the Parties:

For Appellants: Jonathan W. Birdt

For Respondent: Anne Mazur, Specialist

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Jonathan W. Birdt and Julie P. Birdt (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$8,138.00 of additional tax, an accuracy-related penalty of \$1,627.60, and applicable interest, for the 2013 tax year.¹

Appellants waived their right to an oral hearing; therefore, the matter is being decided on the written record.

ISSUE

Whether appellants have demonstrated error in the FTB’s proposed assessment.

FACTUAL FINDINGS

1. Appellants filed a timely 2013 California tax return, reporting taxable income of \$35,956.
2. The Internal Revenue Service (IRS) provided information to the FTB reflecting the results of an IRS audit of appellants’ 2013 return. As a result of the federal audit, the IRS increased appellants’ taxable income by \$114,125 and imposed an accuracy-related penalty for negligence.

¹ Appellants do not dispute the accuracy-related penalty. Therefore, it will not be discussed.

3. According to appellants' 2013 federal Individual Master File (IMF) transcript, appellants agreed with the federal adjustments. The IMF also indicates that the federal adjustments were not revised and there are no reconsiderations pending. Appellants did not notify the FTB of the federal adjustments.
4. Consistent with the federal adjustments, the FTB issued a Notice of Proposed Assessment (NPA) on July 24, 2017. The NPA proposed to assess additional tax of \$8,138.00 and an accuracy-related penalty of \$1,627.60, plus interest.
5. Appellants protested the NPA on July 28, 2017. The FTB sent a letter to appellants explaining that the adjustments were based upon information provided by the IRS and requested appellants to forward any evidence to show that the IRS action was not final.
6. Receiving no response from appellants, the FTB issued a Notice of Action on March 23, 2018, affirming the NPA. This timely appeal followed. In their appeal letter, appellants allege generally that they "dispute the proposed assessment" and state that they "would be happy to discuss settlement." In their reply brief, appellants explain that they only agreed to the federal adjustments "under protest." Appellants have not, however, provided evidence tending to show that any of the adjustments made by the IRS, and which form the basis of the FTB's determination, were incorrect.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622, subd. (a).) A deficiency determination based on a federal audit is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Myers* (2001-SBE-001) 2019 WL 1187160.) In order to carry that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Telles* (86-SBE-061) 1982 WL 11930.)


In their appeal letter, appellants request a settlement of the matter. However, the Office of Tax Appeals cannot compromise or settle a tax liability; its responsibility is to determine the correct amount of a taxpayer's California tax liability. Appellants assert that they agreed to the federal changes "under protest" and, as a result, the FTB should not follow the federal changes. A taxpayer's mere assertion of the incorrectness or impropriety of the federal determination, or allegation that he or she acquiesced to the federal determination under duress or coercion, does not shift the burden to the FTB to justify the correctness of its proposed assessment. (*Appeal of Tombini* (79-SBE-115) 1979 WL 4157; *Appeal of Johnston* (75-SBE-030) 1975 WL 3514.) The taxpayer still must show that the federal determination was incorrect or inapplicable for California tax purposes. Here, although appellants argue that the FTB improperly disallowed deductible employee expenses, they have provided no explanation or documentation in support of their contention that the FTB improperly disallowed the deductions. Because appellants have provided no evidence or documentation to show error in the FTB's proposed assessment or to show error in the final federal assessment on which it is based, they have not met their burden of proof.

HOLDING

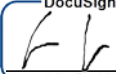
Appellants have not demonstrated error in the FTB's proposed assessment.

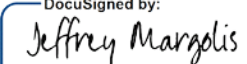
DISPOSITION

The FTB's action is sustained.

DocuSigned by:

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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:

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Jeffrey I. Margolis
Administrative Law Judge