

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042700
MICHAEL S. SY AND ANA C. SY) Date Issued: May 22, 2019
_____)
_____)

OPINION

Representing the Parties:

For Appellant: No appearance

For Respondent: Bradley Coutinho, Tax Counsel
Natasha Page, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Michael S. Sy and Ana C. Sy (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$3,524 of additional tax, and applicable interest, for the 2013 taxable year.

Office of Tax Appeals Administrative Law Judges Teresa A. Stanley, Daniel K. Cho, and Douglas Bramhall convened an oral hearing for this matter in Van Nuys, California, on January 24, 2019; however, appellants failed to appear. The record remained open to allow appellants to submit further evidence. After receipt of additional briefing, the record was closed on April 5, 2019, and this matter was submitted for decision.

ISSUE

Have appellants shown that FTB’s proposed assessment for taxable year 2013 is incorrect?

FACTUAL FINDINGS

1. Appellants timely filed a California state tax return for taxable year 2013.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) showing that appellants failed to report an additional \$333 in interest income and additional capital gains of \$37,557. Specifically, Wells Fargo Bank reported interest

payments totaling \$584, and appellants reported interest received of \$251. In addition, Goldman Sachs reported two capital gains distributions of \$16,465 and \$21,092, but appellants reported no capital gains.¹

3. FTB issued a Notice of Proposed Assessment (NPA) increasing appellants' income by \$37,890² and proposing additional tax of \$3,524, plus applicable interest.
4. Appellants' IRS account transcript shows that as of May 10, 2018, the IRS had not reduced or canceled the additional federal tax for 2013.
5. Appellants protested FTB's proposed assessment, asserting that they did not recall any adjustment made by the IRS, and that they do not have further correspondence regarding taxes owed in 2013.
6. FTB sent a letter to appellants informing them that FTB would withdraw or revise its NPA if appellants provided evidence showing that the IRS had canceled or reduced the federal assessment.
7. Appellants did not respond, and FTB issued a Notice of Action affirming the additional tax proposed in the NPA, plus interest. Appellants timely filed this appeal.
8. At appellants' request, a hearing was scheduled for January 24, 2019, in Van Nuys, California. Neither appellants nor a representative for appellants appeared at the hearing. Nonetheless, we conducted the hearing and, as we advised the parties at the prehearing conference, we admitted appellants' exhibits 1-3 and FTB's exhibits A-G into evidence. The hearing was adjourned, and the record was left open for an additional 30 days in order to give appellants more time to obtain documents from the IRS.
9. On March 15, 2019, appellant-husband sent an email stating that he is "agreeing to the amount of \$21,092 as capital gain from Goldman Sachs Growth" fund (GSG fund) but continued to dispute the remaining amounts of proposed assessment.
10. FTB submitted a document entitled "Attachment/Overflow D." That document was referenced on appellants' 2013 federal Schedule B. The attachment shows appellants reported interest income of \$251 received from Wells Fargo Bank. The Form 1099-INT issued by Wells Fargo Bank shows total interest received by appellants of \$584.

¹ The \$84 reported as capital gains by appellants (line 13 of their California Adjustments schedule CA 540) corresponds to ordinary dividends received from a separate Goldman Sachs investment fund.

² Unreported interest of \$333 plus unreported capital gains of \$37,557.

DISCUSSION

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state.” R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as “all income from whatever source derived.” Gross income includes interest, dividends, and capital gains. (IRC, § 61(3), (4), and (7).) R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous.

It is well-settled law that a deficiency determination based on a federal audit is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Hutchinson* (82-SBE-121) 1982 WL 11798.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, FTB received federal information showing that adjustments had been made to appellants’ 2013 federal tax return. Specifically, appellants’ interest income was increased by \$333, and capital gains were increased by \$37,557. Based on this information, FTB adjusted appellants’ federal adjusted gross income on their California return, which resulted in an additional California tax of \$3,524.

Appellants initially protested the proposed assessment stating that they “are not familiar with the proposed adjustment and do not recall any adjustment made by IRS.” On appeal, appellants asserted that the “IRS has finalized figures with [a] different outcome.” They indicated they would provide evidence at a later date. However, no further information was submitted showing that the IRS had canceled or modified its assessment for 2013. Instead, an IRS account transcript shows that the last action on appellants’ 2013 federal tax liability occurred on June 2, 2016, when appellants paid their liability in full.

Appellants conceded that they had received capital gains of \$21,092 from GSG fund. However, federal information provided to FTB shows that appellants received not only the \$21,092 from GSG fund, but an additional \$16,465 in capital gains. Additionally, while appellants did report partial interest received from Wells Fargo Bank, the amount was understated by \$333. The entire capital gains of \$37,557 and the additional interest of \$333 must be included in appellants’ gross income. Therefore, appellants have not shown that FTB’s

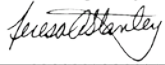
proposed assessment was incorrect. Furthermore, they have not shown that the IRS reduced or canceled its federal assessment. They are liable for the \$3,524 additional tax, plus applicable interest.

HOLDING


Appellants have not shown that FTB’s proposed assessment based on the federal determination was incorrect.


DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Jeffrey G. Angeja
Administrative Law Judge, on behalf of
Douglas Bramhall
Administrative Law Judge