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2019 – OTA – 231
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

EYAL BRIKMAN

OTA Case No. 18042734

Date Issued: July 30, 2019

OPINION

Representing the Parties:

For Appellant: Eyal Brikman

For Respondent: Freddie C. Cauton, Legal Analyst

For Office of Tax Appeals: Sarah Fassett, Tax Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Eyal Brikman ("appellant") appeals an action by the Franchise Tax Board ("respondent") proposing $600 of additional tax, and applicable interest, for the 2013 tax year.

Appellant waived his right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has shown error in respondent's proposed assessment of additional tax on unreported income for the 2013 tax year, which is based on a federal adjustment.

FACTUAL FINDINGS

1. Appellant timely filed his 2013 California Resident Income Tax Return (Form 540). Appellant reported federal adjusted gross income (AGI) of $44,355, standard deduction of $3,906, and taxable income of $40,449, for a total tax liability of $1,442. After applying exemption credits of $106 and California withholding of $87, appellant reported a tax liability of $1,249.
2. Subsequently, respondent received information from the Internal Revenue Service (IRS) of federal adjustments made to appellant's 2013 federal tax return. The federal

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adjustments increased appellant's federal AGI from $44,355 to $51,765, an increase of $7,410. Specifically, the IRS made adjustments for unreported taxable wages of $7,000, and unreported partnership/small business income in the amount of $410.

3. Based on the information provided by the IRS, respondent made corresponding adjustments to appellant's 2013 tax account and issued a Notice of Proposed Assessment (NPA) on December 9, 2016. The NPA increased appellant's California taxable income by $7,410, from $40,449 to $47,859. The NPA proposed additional tax of $600, plus applicable interest.

4. Appellant protested the NPA by letter dated May 9, 2017, contending that the IRS lost all his Forms W-2 for tax year 2013. Appellant also stated that the amounts respondent listed in the NPA are the result of the IRS mistakenly "mixing" appellant's business and personal income, and that he did not see any reason to pay respondent additional tax or penalty because he already paid his 2013 taxes. Respondent received a payment of $649.69 on February 7, 2017, which satisfied appellant's 2013 balance in full.[1]

5. On August 3, 2017, respondent issued a position letter in reply, contending that its NPA was correct because the adjustments were made based on federal information and that it received no information that the IRS cancelled or reduced its assessment. Respondent stated that if appellant disagreed with the NPA, he would need to resolve the issue with the IRS because California law conforms with federal law for the issues involved. Respondent gave appellant 30 days to provide respondent with a revised IRS report or any additional information to consider before it affirmed the NPA.

6. There is no record that appellant responded to respondent's position letter. Respondent issued a Notice of Action (NOA) on January 9, 2018. The NOA revised the NPA and allowed an additional $694 of California withholding credits, which respondent refunded, plus interest, on May 8, 2018. The NOA otherwise affirmed the NPA. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. R&TC section 17041(a) provides, in

[1] FTB is currently holding appellant's February 7, 2017 payment in suspense, pending the outcome of this appeal.

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pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. R&TC section 17071 incorporates Internal Revenue Code section 61, which defines "gross income" as including "all income from whatever source derived." It is well-settled that a deficiency determination based on a federal audit report is presumptively correct and that the 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. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, respondent proposed an assessment of additional tax based on an increase in appellant's federal AGI as reported in a notice of federal determination. The federal adjustment is based on $7,410 of income not included in appellant's 2013 federal tax return, which was reported on a Form W-2 and a Schedule K-1 issued to appellant for the year at issue. Appellant has the burden of proving error in respondent's proposed assessment, or the federal adjustment upon which it is based, but has provided no evidence demonstrating error in the proposed assessment of additional tax for the 2013 tax year.

Respondent provided a copy of appellant's 2013 federal account transcript and 2013 wage and income transcript, which shows that appellant had $7,410 of unreported income in 2013. Because appellant did not report the income on his California personal income tax return, respondent properly assessed additional tax based on the unreported income. Also, appellant's federal account transcript for 2013 shows that the federal adjustment of additional tax based on the unreported income has not been subsequently revised. This evidence contradicts appellant's contentions that the IRS erred because it lost appellant's tax forms and improperly mixed business and personal income. Appellant has provided no evidence to support his contentions.

Appellant's contention that respondent's assessment is erroneous because appellant already paid his taxes is contrary to facts and evidence. Appellant provided no evidence to show that respondent taxed appellant twice on the same income. Rather, appellant provided a Return Information Notice dated January 22, 2015 for another taxpayer (not appellant), which does not show respondent erred in its proposed assessment of tax for appellant's 2013 tax year. Appellant has not provided any other information or evidence to rebut the documents supporting respondent's assessment. Thus, appellant has not met his burden of proving respondent's proposed assessment is erroneous.

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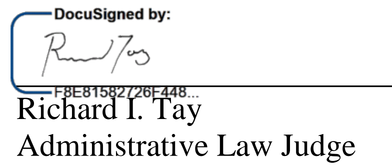
HOLDING

Appellant has not established error in respondent's proposed assessment, which is based on a federal tax adjustment.

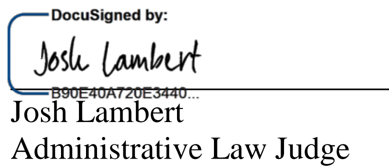
DISPOSITION

Respondent's proposed assessment for the 2013 tax year is sustained in full.

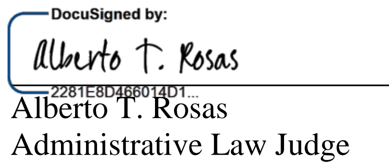


Richard I. Tay
Administrative Law Judge

We concur:



Josh Lambert
Administrative Law Judge



Alberto T. Rosas
Administrative Law Judge