

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
AMELIA I. LIGAN

) OTA Case No. 18042823
)
) Date Issued: July 31, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Amelia I. Ligan

For Respondent: Anthony Epolite, Tax Counsel IV

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant Amelia I. Ligan¹ (Ligan) appeals respondent Franchise Tax Board’s (FTB) action proposing \$1,068 of additional tax, and applicable interest, for the 2012 tax year.²

Ligan waived her right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Did Ligan show error in FTB’s proposed assessment, which was based on a final federal determination?

FACTUAL FINDINGS

1. Ligan and her spouse (the “couple”) timely filed a joint 2012 California Resident Income Tax Return (Form 540).
2. Subsequently, the Internal Revenue Service (IRS) provided information to FTB showing the IRS adjusted the couple’s 2012 federal income tax return by increasing their taxable

¹ Ligan filed a joint return with her spouse. The appeal letter has both spouses’ names but only Ligan signed the letter. As such, this appeal is in Ligan’s name only.

² On July 8, 2016, Ligan made a payment of \$1,176.61 of additional tax assessed and interest. FTB is currently holding her payment in suspense, pending the outcome of this appeal.

income and assessing additional tax. Specifically, the IRS disallowed the following Schedule A itemized deductions: (1) home mortgage interest of \$5,770; (2) charitable contributions of \$5,590; and (3) other expenses of \$1,353. The IRS also disallowed Schedule E repairs of \$9,416 but allowed additional Schedule A gambling losses of \$856 (for total gambling losses allowed of \$17,856, equal to the amount of gambling winnings reported on Forms W-2G). These adjustments resulted in a \$21,273 increase to the couple's taxable income.

3. Based on the IRS information, FTB made corresponding adjustments to the couple's 2012 tax account and issued a Notice of Proposed Assessment (NPA). The NPA increased the couple's California taxable income by \$21,273, and proposed additional tax of \$1,068, plus applicable interest.
4. The couple protested the NPA. On July 8, 2016, the couple made a payment of \$1,176.61, which fully satisfied the proposed liability.
5. In a subsequent position letter, FTB acknowledged the couple's protest of the NPA. The position letter explained that FTB based the NPA on the federal assessment, which was not cancelled or reduced. FTB stated that if the couple disagreed with the NPA, they would need to resolve the issue with the IRS because California law is the same as federal law for the issues involved. FTB gave the couple until June 23, 2017, to provide FTB with a revised IRS report or any additional information to consider.
6. By letter dated October 17, 2017, Ligan informed FTB that she was unable to send a letter to the IRS for audit reconsideration, but now had the time to do so and would contact FTB after hearing back from the IRS.
7. After reviewing the information that Ligan provided, FTB issued a Notice of Action (NOA) on December 4, 2017, affirming the NPA.
8. On January 2, 2018, Ligan faxed the same October 17, 2017 letter to FTB, but this time she included a handwritten note written onto the bottom of the letter. In her handwritten note, Ligan stated that she was unable to mail a letter to the IRS because she was busy helping her husband after the medical procedure he underwent in November 2017.
9. Ligan filed this timely appeal.

DISCUSSION

It is well settled that a deficiency assessment 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.) A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) Income tax deductions are a matter of legislative grace and a taxpayer who claims a deduction has the burden of proving by evidence that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.)

The applicable burden of proof is by a preponderance of the evidence. (Evid. Code, § 115; *Appeal of Estate of Gillespie*, 2018-OTA-052P, at p. *4.) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) To carry the burden of proof, the taxpayer must point to an applicable statute and show by credible evidence that the deductions claimed come within its terms. (*Appeal of Telles* (86-SBE-061) 1986 WL 22792.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, FTB proposed an assessment of additional tax based on an increase in the couple's federal AGI, as the IRS reported to FTB. Specifically, the IRS disallowed Schedule E repairs of \$9,416 and Schedule A itemized deductions totaling \$11,857. FTB made a corresponding adjustment to the couple's 2012 California tax account, which resulted in an increase of taxable income of \$21,273.

Ligan has the burden of proving error in FTB's proposed assessment, or the federal adjustment upon which it is based. Although Ligan asserts that she disagrees with the proposed assessment, she provided no evidence demonstrating error in the proposed assessment.

The IRS allowed an additional \$856 of gambling losses, for a total of \$17,856 in gambling losses.³ To support her claim that her gambling losses should be \$17,856, Ligan provided copies of the five Forms W-2G included with the couple's 2012 Form 540. However, the NPA shows that FTB took the additional gambling losses into account when calculating

³ R&TC section 17201 conforms to Internal Revenue Code section 165(d) and allows a deduction for gambling losses only to the extent of a taxpayer's gambling winnings.

Ligan’s revised taxable income. Thus, the total amount of Ligan’s allowed gambling losses for California purposes was \$17,856.

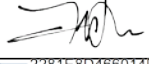
Ligan did not offer any other argument or evidence. Therefore, she failed to meet her burden of proving error in FTB’s proposed assessment for the 2012 tax year.

HOLDING

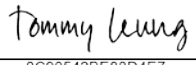
Ligan did not show error in FTB’s proposed assessment, which was based on a final federal determination.

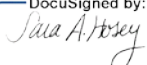
DISPOSITION

We sustain FTB’s proposed assessment in full.

DocuSigned by:

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Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge