

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18043027
DANIEL J. AREL AND DANIELLE R. AREL) Date Issued: August 22, 2019
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OPINION

Representing the Parties:

For Appellants Daniel J. Arel and Danielle R. Arel

For Respondent: Freddie C. Cauton, Legal Analyst

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellants Daniel J. Arel and Danielle R. Arel appeal an action by respondent Franchise Tax Board (FTB) proposing an additional tax of \$516, plus applicable interest, for the 2012 tax year.

Appellants waived their right to an oral hearing and this matter is therefore decided based on the written record.

ISSUE

Whether appellants have established error in FTB’s proposed assessment.

FACTUAL FINDINGS

1. Appellants filed a timely 2012 California tax return, on which they reported federal adjusted gross income (AGI) of \$73,058 and made California adjustments by subtracting \$6,606 of unemployment compensation. Appellants applied a standard deduction and reported a California taxable income amount of \$58,770. After applying exemption and other credits, appellants reported a total tax of \$703, which, after applying withholding payments of \$1,043, resulted in a claimed overpayment of \$340, which FTB refunded.

2. FTB subsequently received information from the Internal Revenue Service (IRS) which revealed that appellants reported a federal AGI of \$79,664 on their 2012 federal return, which was \$6,606 more than the \$73,058 federal AGI reported on appellants' 2012 California return.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that increased appellants' taxable income from \$58,770, as reported on the return, to \$65,376, an increase of \$6,606. The NPA allowed appellants' previously claimed exemption and other credits except for their claimed nonrefundable renter's credit of \$120, which became inapplicable due to the increase in appellants' California AGI, and calculated a total tax of \$1,219. After crediting appellants their previous 2012 tax payments of \$703, the NPA proposed an additional tax of \$516, plus applicable interest.
4. Appellants protested the NPA on the grounds that the return was filed using the state online tax filing system and that the "unemployment tax was not missing from [their] original filing" Appellants asserted that if a mistake was made, it was due to the state's online system. Finally, appellants requested that the nonrefundable renter's credit be allowed based on their original filing.
5. FTB replied by letter, asserting that it had adjusted appellants' California tax return based on information received from the IRS, and that California law requires that the federal AGI reported on a California tax return must match the amount shown on the federal return.
6. After appellants did not respond, FTB issued a Notice of Action affirming the NPA.

DISCUSSION

R&TC section 17041 imposes a tax upon the entire taxable income of every resident of this state. R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with the FTB, "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable" The federal definition of AGI found in Internal Revenue Code (IRC) section 62 is incorporated into California law by R&TC section 17072. Accordingly, taxpayers must report the same federal AGI on both their federal and California returns.

In this appeal, the federal AGI reported on appellants' California return did not match the federal AGI reported on their federal return. The difference between the two is \$6,606,

apparently attributable to unemployment compensation. IRC section 85 provides that unemployment compensation paid pursuant to governmental programs is includible in gross income. However, R&TC section 17083 provides, “Section 85 of the Internal Revenue Code, relating to unemployment compensation, shall not apply.” Accordingly, unemployment compensation paid pursuant to a governmental program is not includible in taxable income for purposes of calculating a taxpayer’s California income tax. Appellants’ original return properly accounted for this difference in federal versus state tax law by subtracting the \$6,606 amount from their federal AGI on their California return (on Schedule CA). However, it appears this amount was also deducted from the reported federal AGI amount *prior* to California adjustments, resulting in a double deduction, which is not correct.

Appellants contend that it is their belief that they properly reported their income using the state’s online filing system. Alternatively, appellants assert that any error on their return was the fault of the state’s online filing system, either by not allowing the unemployment compensation to be properly reported or otherwise. The precise facts of how appellants prepared and filed their return are not clear; however, the manner in which appellants filed their return is irrelevant to the proper computation of appellants’ taxable income. Here, FTB has shown that appellants’ return erroneously understated their federal AGI. Accordingly, FTB’s proposed assessment is accurate in correcting that error, and reflecting the proper amount of tax due for the 2012 tax year.

HOLDING

Appellants have failed to establish error in FTB's proposed assessment.

DISPOSITION

FTB's action is sustained.

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John O Johnson

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John O. Johnson

Administrative Law Judge

We concur:

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Teresa A Stanley

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Teresa A. Stanley

Administrative Law Judge

DocuSigned by:

Neil Robinson

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Neil Robinson

Administrative Law Judge