2019 – OTA – 265
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011395
	)
DEBBIE L. MORRISON	) Date Issued: September 17, 2019
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Debbie L. Morrison[1]

For Respondent: Freddie C. Cauton, Legal Assistant

For Office of Tax Appeals: Philip Wahlquist, Graduate Student Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Debbie L. Morrison (appellant) appeals an action by the Franchise Tax Board (FTB) proposing $1,539 of additional tax and applicable interest for the 2012 taxable year.

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

ISSUE

Has appellant established error in FTB’s proposed assessment for taxable year 2012, which is based on a federal determination?

FACTUAL FINDINGS

1. Appellant filed a timely 2012 California Resident Income Tax Return.
2. On April 3, 2018, FTB received information from the Internal Revenue Service (IRS) that showed the IRS adjusted appellant’s federal income tax return. As relevant here, the adjustment reflected an additional $50,270 for pension/annuity income.

[1] Appellant filed a joint return with her husband, Alvin C. Morrison. However, Alvin C. Morrison is deceased and is therefore not a party to this appeal.

3. Subsequently, FTB issued a Notice of Proposed Assessment (NPA) on April 20, 2016, that proposed to increase appellant's taxable income by the $50,270 in pension/annuity income reported by Prudential Insurance Co. of America (Prudential) on a Form 1099-R. FTB allowed additional withholdings of $979 for state income taxes withhold. In accordance with that increase in taxable income, FTB proposed to assess additional tax of $1,539, plus applicable interest.
4. On June 16, 2016, appellant protested the NPA, asserting that the $31,115[2] distribution reported by Prudential was from an individual retirement account (IRA) and was rolled over to a qualified retirement account within the allowed rollover period. Bank of America N.A. (Bank) reported a separate IRA distribution of $31,556 to appellant on Form 1099-R. Appellant submitted documentation showing that she had rolled over that amount into another IRA account.[3]
5. On September 25, 2017, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.
6. The Office of Tax Appeals held a telephone conference with appellant and FTB on April 18, 2019. FTB informed appellant that the $50,270 amount was received from Prudential; however, the documentation she provided related to the distribution from Bank. Therefore, appellant was instructed to file additional documents reflecting the disposition of the Prudential distribution.
7. Subsequently, appellant provided documentation showing that the Prudential distribution was used to purchase a manufactured home. Appellant's Prudential statement for the distribution shows that appellant received a gross payment of $50,270,[4] less total deductions of $11,059. Appellant's IRS Account Transcript for 2012 shows that $10,054 of the amount withheld was paid for federal income taxes.[5] The difference in withholdings after subtracting the federal taxes withheld totals $1,006.

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[2] Appellant appears to have confused the taxable income of $31,115 that she received from Prudential and failed to report on her return, with the $31,556 distribution reported by Bank.

[3] For rules regarding rollover contributions to an IRA, see Internal Revenue Code (IRC) section § 408.

[4] Numbers are rounded to the nearest dollar.

[5] The Forms 1099-R attached to the IRS Account Transcript only report federal withholding. The additional $3,810 in federal tax withheld includes Form W-2 withholding ($3,539) and a Bank withholding ($271).

8. In an additional brief, FTB conceded a $27 adjustment, on the basis that the $979 withholding credit allowed in the NPA was $27 less than the amount withheld for state income taxes.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer must either concede the accuracy of a federal determination or state how it is incorrect. It is well-settled law that a deficiency assessment based on a federal audit report is presumptively correct and that 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.)

California incorporates IRC section 61, which defines "gross income" as "all income from whatever source derived." (R&TC, § 17071.) Further, California conforms to IRC sections which mandate that retirement distributions be included in gross income, unless an exception applies. (IRC, §§ 408(d), 72; R&TC, § 17501.) One exception is provided when a distribution is rolled over from an eligible retirement plan into another eligible retirement plan. (IRC, § 408(e).)

The income at issue is a distribution from Prudential that appellant did not include in gross income reported on her return. Appellant argued that she had rolled over the distribution into another retirement account, and therefore, it was not taxable. In support, appellant provided documentation showing that the Bank distribution (rather than the Prudential distribution) was deposited into an account with Aviva Life and Annuity Company. Subsequently, appellant provided records showing that the Prudential distribution was from a 401(k)[6] retirement account, that taxes were withheld, and that the balance was placed into an escrow account that appellant asserted was for the purpose of purchasing a manufactured home. Appellant did not allege that the home purchase qualified for an exception to inclusion in gross income.[7] Instead, she believes that state taxes were already withheld.

Based on the evidence, it is clear that Prudential withheld more than what it paid to the IRS for appellant's federal income taxes. Although, in the NPA, FTB credited appellant with

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[6] A retirement plan organized under IRC section 401(k).

[7] There is no exception for the use of a 401(k) retirement distribution to purchase a home. (See IRC, § 401.)

$979 for state taxes withheld from the Prudential distribution, $1,006 was actually withheld, as conceded by FTB.

Appellant has not provided any evidence that would support a finding that the Prudential distribution was not a taxable distribution. Therefore, the Prudential distribution is properly included in appellant's 2012 gross income, and FTB's proposed assessment of additional tax is correct. Appellant is entitled to additional withholding credit of $27.

HOLDING

Appellant has not shown error in FTB's proposed assessment or the federal adjustment upon which it is based. Appellant has shown error in FTB's credit for state taxes withheld from her Prudential distribution, as conceded by FTB. Appellant must be credited with additional withholdings of $27.

DISPOSITION

Except for the correction to appellant's state withholdings, FTB's action is sustained.

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

We concur:

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
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Andrew J. Kwee
Administrative Law Judge