

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JASMINA TOPALOVIC

) OTA Case No. 18073474
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) Date Issued: September 9, 2019
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OPINION

Representing the Parties:

For Appellant: Jasmina Topalovic

For Respondent: Donna L. Webb, Staff Operation Specialist

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

P. KUSIAK, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Jasmina Topalovic (appellant) appeals an action by the Franchise Tax Board (FTB) proposing an additional tax of \$509, plus applicable interest, for the 2014 tax year.

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

ISSUE

Whether appellant has established error in the FTB’s proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant timely filed a 2014 California Resident Income Tax Return (Form 540 2EZ), reporting total wages of \$13,698, unemployment compensation of \$11,700, and a tax of \$9. After claiming California withholdings of \$281, appellant reported an overpaid tax of \$272, which FTB refunded.
2. Subsequently, the Internal Revenue Service (IRS) audited appellant’s 2014 return and made adjustments that are reflected in a CP 2000 Data Sheet. Specifically, the IRS found an unreported pension distribution of \$10,534, which it included in appellant’s federal

adjusted gross income (AGI). In addition, the IRS determined that the pension distribution was subject to a 10 percent federal premature distribution tax. As a result of these revisions, the IRS increased appellant's 2014 federal AGI from \$13,698 as reported on the return to \$24,232, an increase of \$10,534.

3. Based on the IRS information, FTB issued a Notice of Proposed Assessment (NPA) that increased appellant's taxable income from \$9,706 as reported on the return to \$20,240, an increase of \$10,534. The NPA computed a tax of \$363, imposed a California 2.5 percent premature distribution tax of \$263.02 and allowed personal exemptions of \$108, resulting in a total tax of \$518. This amount was reduced by appellant's prior payment of \$9, resulting in a proposed additional tax of \$509 plus applicable interest.
4. Appellant protested the NPA on the grounds that the IRS had reduced its proposed amount due from \$3,360 to \$1,127, based on her submissions. Appellant asserted that she had accepted the revised IRS determination and entered into an installment agreement to pay the balance due. Appellant asserted that she disagreed with \$558.37 of the FTB's proposed liability and submitted supporting documents.
5. After reviewing appellant's protest and documentation, FTB responded to appellant indicating that the documentation showed appellant had accepted the IRS's increase of \$10,534 in her federal AGI from \$25,398 on the return to \$35,932, which matched the \$10,534 used to compute additional tax on the NPA. FTB provided appellant an opportunity to submit additional information.
6. After appellant failed to provide any additional information, the FTB issued a Notice of Action (NOA) that affirmed the NPA. Appellant filed this appeal.

DISCUSSION

R&TC section 18622, subdivision (a), provides in pertinent part that a taxpayer must either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled 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, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer's failure to produce evidence that is within his control gives rise to a presumption

that such evidence is unfavorable to his case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

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,” including pension income. IRC section 72(t)(1) generally imposes a 10 percent tax (in addition to income tax otherwise imposed) on early distributions from qualified retirement plans that are includible in gross income. This 10 percent tax is also known as the federal early distribution tax or penalty. R&TC section 17085, subdivision (c)(1), adopts IRC section 72, but reduces the rate of the early distribution tax from 10 percent to 2.5 percent.

In this case, it is undisputed that the IRS audited and revised appellant’s 2014 federal return, adding an unreported pension distribution of \$10,534 to appellant’s federal AGI and subjecting appellant to a federal 10 percent premature distribution tax. As a result of these revisions, the IRS increased appellant’s federal AGI from \$13,698 as reported on the return to \$24,232.


It is also undisputed that the CP 2000 Data Sheet, the 2014 federal income transcript and the correspondence in the record, do not show any IRS adjustments to its treatment of the distribution of \$10,534 and the federal 10 percent premature distribution tax, which provide the basis for the FTB’s own increase of appellant’s taxable income of \$10,534 and its imposition of a California 2.5 percent premature pension distribution tax of \$263.02. Both of these items are included on the NPA and on the corrected return completed by the FTB. In addition, appellant has neither made any legal arguments, nor provided any evidence as to why her pension distribution of \$10,534 should not be included in taxable income pursuant to R&TC section 17071 and IRC section 61, or that her distribution is not subject to the California 2.5 percent premature distribution tax pursuant to R&TC section 17085, subdivision (c)(1), and IRC section 72(t)(1). Appellant has not raised any other contentions. Therefore, we find that appellant has failed to show error in the FTB’s proposed assessment, which is based on a federal determination.

HOLDING


Appellant has failed to establish error in the FTB's assessment, which is based on a federal determination.


DISPOSITION

The FTB's action is sustained.

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Patrick J. Kusiak
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Jeffrey G. Angeja
Administrative Law Judge