

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042974
CHRISTOPHER F. AGUILERA)
) Date Issued: October 21, 2019
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OPINION

Representing the Parties:

For Appellant: Christopher F. Aguilera

For Respondent: Meghan McEvelly, Tax Counsel III

For Office of Tax Appeals: Mai Tran, Tax Counsel IV

N. ROBINSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Christopher F. Aguilera (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$2,908 of additional tax, plus applicable interest, for the 2013 tax year.

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

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessment, which is based upon a federal determination.

FACTUAL FINDINGS

1. Appellant received a \$31,250 settlement payout from Fund 1 Independent Foreclosure Review (Fund 1) in 2013. Fund 1 issued a Form 1099-MISC to appellant listing the payout as “other income.” According to a letter dated February 16, 2015, from Fund 1’s paying agent to appellant (2015 Letter), the payment was the result of an agreement

between federal banking regulators and JPMorgan Chase regarding “an enforcement action relating to deficient mortgage servicing and foreclosure processes.”¹

2. Appellant filed a timely California tax return (Form 540) for the 2013 tax year. Appellant did not include the \$31,250 payment from Fund 1. FTB accepted the return as filed.
3. FTB received information from the Internal Revenue Service (IRS) that indicated the IRS audited and adjusted appellant’s federal tax return for the 2013 tax year. Among other adjustments, the IRS increased appellant’s taxable income by the “other income” of \$31,250. Appellant did not notify FTB of the federal adjustments.
4. Based on the federal adjustments, FTB increased appellant’s taxable income by \$31,250. FTB sent appellant a Notice of Proposed Assessment (NPA) dated November 15, 2016, reflecting the proposed adjustment and proposing additional tax of \$2,908, plus interest.
5. On or about January 17, 2017, appellant protested the NPA. Appellant requested FTB cancel the proposed assessment because the payout resulted from a class action lawsuit related to Chase’s predatory lender practices. Appellant stated that Chase’s actions resulted in the foreclosure of his home in 2008. Appellant further stated that, based on his tax attorney’s discussion with the IRS, the payout was not subject to any additional taxes.
6. Appellant submitted an offer in compromise (OIC) to the IRS on or about August 2, 2017.² In a letter to FTB dated August 7, 2017, appellant stated that it was unfair for FTB to pursue additional taxes on this income.
7. After review, FTB issued to appellant a Notice of Action dated February 20, 2018, affirming the NPA. Appellant then filed this timely appeal.

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. A deficiency assessment based on a

¹ The 2015 Letter stated that the check was attached to the letter. However, according to the IRS wage and income transcript, the payment to appellant was made in 2013. Appellant does not appear to dispute receiving the payment in 2013.

² It is unclear whether appellant’s OIC was approved by the IRS. It appears that appellant had previously submitted an OIC to the IRS which was denied.

federal audit report is correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett* (86-SBE-109) 1986 WL 22731.)

Appellant contends that the payment should not be subject to tax because he already paid federal tax on it and it would be unfair for him to also pay tax to California since the payout represented money Chase “stole” from him. Generally, payments from a foreclosure settlement is includable in gross income. (See generally, R&TC, § 17071; Int. Rev. Code, § 61; see especially, *Ritter v. Commissioner*, T.C. Memo. 2017-185.)³ Appellant appears to argue that the payment represents lost equity and is nontaxable income. However, appellant has not provided any evidence to support a finding that the payment was for lost equity. Therefore, appellant has not shown that the payout is nontaxable income. Appellant has not demonstrated any error with FTB’s proposed assessment or the federal adjustments based thereon.

HOLDING

Appellant has not shown error in FTB’s proposed assessment or the federal determination upon which it is based.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C905428E88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

³ In *Ritter v. Commissioner*, T.C. Memo. 2017-185, the taxpayer received a settlement payment from Fund 1 and argued that the payment was not subject to federal tax. The court held otherwise, noting that the taxpayer was not required to show financial harm to receive a monetary payment, the amount received by the taxpayer did not include any payment for lost equity, there was no evidence that payment was a deemed increase or decrease in the amount realized by the taxpayer from the foreclosure or that the taxpayer was entitled under a specific statutory provision to exclude that payment from gross income. (*Ritter v. Commissioner*, T.C. Memo. 2017-185.)