

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18093710  
**KIM RANSOM** )  
 ) Date Issued: October 8, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Kim Ransom

For Respondent: Donna L. Webb, Staff Operation Specialist

For Office of Tax Appeals: Linda Frenklak, Tax Counsel IV

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Kim Ransom (“appellant”) appeals an action by Franchise Tax Board (“FTB”) proposing \$1,154 of additional tax and 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 shown error in FTB’s proposed assessment of \$1,154 in additional tax, based on a federal adjustment for unreported pension income.

**FACTUAL FINDINGS**

1. On October 14, 2015, appellant timely filed a 2014 California Resident Income Tax Return (Form 540). She reported federal adjusted gross income (AGI) of \$136,632, took the standard deduction in the amount of \$7,984 and reported taxable income of \$128,648. After applying exemption credits of \$441 and a self-assessed early distribution tax of \$150, appellant reported a total tax of \$7,763.

2. The Internal Revenue Service (IRS) provided FTB with information that the IRS adjusted appellant's 2014 federal income tax return for unreported income from pensions/annuities in the amount of \$3,486, among other adjustments not relevant here.<sup>1</sup>
3. FTB reviewed appellant's 2014 federal wage and income transcript, which shows that Fidelity Investments issued appellant a Form 1099-R for an early withdrawal pension/annuities distribution of \$3,486 with no known exceptions to the early distribution penalty.
4. FTB issued a Notice of Proposed Assessment (NPA) dated February 22, 2018, applying the federal adjustments to appellant's California taxable income. The NPA proposed additional tax on the previously unreported \$3,486 of pension/annuities income, plus applicable interest. The additional tax included a 2.5 percent early distribution tax for the early withdrawal of pension income.
5. Appellant protested the NPA in a letter dated April 9, 2018, stating that she was waiting for revised information from the IRS concerning her 2014 federal account. FTB issued a Notice of Action (NOA) dated July 6, 2018, which affirmed the NPA with respect to the additional pension income and reduced the standard deduction based on adjustments to other items not at issue in this appeal. On the NOA, FTB made a proposed assessment of additional tax in the amount of \$1,154, plus applicable interest.
6. Appellant filed this timely appeal.

### DISCUSSION

A proposed deficiency assessment based on federal adjustments to income is presumed to be correct, and the burden is on the taxpayer to prove it is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Wing E. and Faye D. Lew* (78-SBE-073) 1978 WL 3876; *Appeal of Donald G. and Franceen Webb* (75-SBE-061) 1975 WL 3545.) R&TC section 18622 requires a taxpayer to concede the accuracy of the federal changes or to state wherein the changes are erroneous.

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<sup>1</sup> The federal adjustment also included unreported gambling income. FTB originally included the gambling income adjustment in calculating its proposed assessment, but subsequently removed it after appellant provided information showing that she was entitled to claim gambling losses equal to the gambling income amount. Accordingly, and as discussed below, the proposed assessment at issue is based solely on the addition of unreported pension income and does not include unreported gambling income.

R&TC section 17041(a) 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 defined “gross income” as “all income from whatever source derived,” including pension and annuity income. (IRC, § 61(a)(9), (11).<sup>2</sup>) California residents who receive pensions or annuities must include these amounts in taxable income for California purposes. (R&TC, § 17071.)

If pension income is an early withdrawal from a qualified retirement plan, an early distribution tax is also assessed. IRC section 72(t)(1) imposes a 10 percent tax (in addition to the income tax otherwise imposed) on early distributions from qualified retirement plans that are includable in gross income. R&TC section 17085(c)(1) adopts IRC section 72(t) for California tax purposes, but reduces the rate of the early distribution tax from 10 percent to 2.5 percent.

When FTB received information from the IRS that appellant failed to report on her 2014 federal return the early withdrawal of \$3,486 from a qualified retirement account, FTB properly assessed additional state income tax and an additional early distribution tax.

On appeal, appellant concedes that she failed to report the early withdrawal of \$3,486 from a qualified retirement account on her 2014 California income tax return. She incorrectly contends that FTB erroneously added, rather than subtracted, gambling losses she incurred in 2014. Rather, the NOA shows that FTB offset appellant’s gambling income with gambling losses. Appellant has not provided any other documents or information to show error in FTB’s proposed assessment.

#### HOLDING

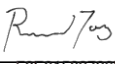
Appellant did not show error in FTB's proposed assessment of additional tax based on a federal determination.

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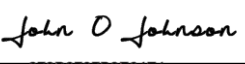
<sup>2</sup> As in effect for the year at issue. An update to the statute adjusted the locations of pension and annuity income to subsections (a)(8) and (a)(10), effective December 22, 2017.


DISPOSITION

FTB's action is sustained.

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Richard I. Tay  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge