

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093824
ALAN M. NOCHE AND)
HA T. DO) Date Issued: October 15, 2019
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OPINION

Representing the Parties:

For Appellants: Alan M. Noche, Taxpayer
Ha T. Do, Taxpayer

For Respondent: Anthony S. Epolite, Tax Counsel IV

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

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045, Alan M. Noche and Ha T. Do (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing an additional tax of \$2,251, plus applicable interest, for the 2013 tax year. This matter is being decided based on the written record because appellants waived their right to an oral hearing.

ISSUE

Whether appellants have established error in FTB’s proposed assessment, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellants hired a tax preparer, Mellissa Ann Vega (Lisa Vega) of L&T Works, to prepare their state and federal income tax returns.
2. On May 29, 2014, L&T Works filed a false 2013 Federal Income Tax Return on behalf of appellants, claiming total itemized deductions of \$44,998, which appellants were not entitled to claim. The itemized deductions consisted of \$4,075 for state and local income

taxes, \$500 for gifts to charity, and \$40,423 for job expenses and certain miscellaneous deductions.

3. On May 29, 2014, L&T Works filed a false 2013 California Resident Income Tax Return on behalf of appellants, claiming California itemized deductions of \$40,923, which appellants were not entitled to claim.¹ The return claimed a refund of \$1,711. FTB accepted the return as filed and issued a refund of \$1,572 on June 3, 2014.²
4. The Internal Revenue Service (IRS) subsequently audited appellants' 2013 tax year return and disallowed appellants' itemized deductions of \$44,998. As a result of its adjustments, the IRS assessed \$5,657 in additional federal taxes.
5. Appellants did not notify FTB of the federal adjustments.
6. The federal determination became final on or about March 21, 2016, and appellants entered into an installment payment agreement with the IRS on or about March 28, 2016.
7. In a news release dated March 18, 2016, the United States Department of Justice for the Southern District of California (USDOJ-SDC) announced that Lisa Vega, a local tax preparer and owner of L&T Works, was sentenced to prison for seven years, and that she admitted to filing false income tax returns without her clients' knowledge or consent, in order to fraudulently obtain tax refunds to which her clients were not entitled. Additionally, Lisa Vega admitted to stealing her clients' tax refunds by directing the tax refunds into bank accounts that she controlled. The charges were for returns filed for tax years 2009 through 2013. No clients are identified by name in the news release.
8. On April 7, 2016, the IRS notified FTB of the federal adjustments. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) dated July 21, 2017, for the 2013 tax year. The NPA disallowed appellants' claimed California itemized deductions of \$40,923 in full, and instead allowed a standard deduction of \$7,812. The

¹This is \$4,075 less than the federal itemized deductions of \$44,998, because California does not allow, and appellants did not claim, a deduction for state and local income taxes.

²FTB submitted a copy of appellant's state and federal tax returns. Both were unsigned. The record does not indicate whether the 2013 state income tax refund was paid directly to appellants or to appellants' tax preparer and, if so, what amount, if any, was paid by the preparer to appellants.

- NPA increased appellants' 2013 reported taxable income from \$58,938 to \$92,049, an increase of \$33,111.³ The NPA proposed an additional tax of \$2,251 plus interest.
9. Appellants protested the NPA on September 18, 2017, which FTB denied in a Notice of Action (NOA) dated August 1, 2018.
 10. On August 28, 2018, a Victim Witness Coordinator for the USDOJ-SDC notified appellants in writing that they had been identified by law enforcement as victims or potential victims during the investigation of a separate criminal case involving Jamie Alan Lang, who was identified as Lisa Vega's husband in the USDOJ-SDC's news release for Lisa Vega's criminal case.
 11. Appellants timely appealed the NOA on August 31, 2018. On appeal, appellants do not contend error with the federal assessment, and appellants do not contend that they are entitled to the disallowed deductions. To the contrary, appellants contend that they should not have to pay the taxes because they are the victims of a crime, and some of the perpetrators have already been incarcerated for tax fraud and identity theft. Appellants state that they hired a professional tax preparer, L&T Works, to prepare their tax returns, and their tax preparer filed the false and fraudulent state and federal tax returns using different amounts and without obtaining appellants' permission. Appellants further contend that they only agreed to an installment payment plan with the IRS because the IRS threatened to levy their assets. Finally, appellants contend that it is unfair to collect the taxes from appellants now because the criminal case is still ongoing and the IRS informed appellants that they may be entitled to obtain reparations and get their money back after the case involving L&M Works is resolved. In support, appellants refer to the correspondence from the Victim Witness Coordinator.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (Rev. & Tax. Code, § 17071; Int. Rev. Code, § 61(a).) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke* (80-SBE-059) 1980 WL 4988; *Appeal of J. Walshe and M. Walshe* (75-SBE-073) 1975 WL 3557.) If the IRS makes a change or correction to any item of gross income or deduction, the taxpayer must

³ The \$33,111 consists of the disallowed miscellaneous itemized deductions of \$40,423, and gifts to charity of \$500, less the standard deduction of \$7,812.

report the federal change to the FTB within six months after the date it becomes final and shall concede the accuracy of the federal change or state wherein it is erroneous. (Rev. & Tax. Code, § 18622(a).) The date of each final federal determination is the date the IRS assesses the tax within the meaning of Internal Revenue Code section 6203 (which provides that the IRS shall record the liability of the taxpayer pursuant to the applicable rules and regulations). (Rev. & Tax. Code, § 18622(d).) An NPA issued by FTB based on a final federal determination is presumed correct, and the taxpayer bears the burden of proving error. (*Appeal of Sheldon I. and Helen E. Brockett* (86-SBE-109) 1986 WL 22731.)

The federal determination became final on March 21, 2016, and appellants did not notify FTB of the changes. Furthermore, appellants do not contend that appellants are entitled to the disallowed deductions. To the contrary, appellants admit that their 2013 income tax return was “fraudulent” and filed without their permission. As such, we have no basis to conclude that FTB incorrectly disallowed the deductions. Appellants request leniency on the basis that they were the victims of a crime, and in support they cite to the news release from the USDOJ-SDC, and the correspondence from the Victim Witness Coordinator. Although it appears that appellants might be the victims in a criminal tax refund conspiracy, this does not change the fact that appellants are not entitled to deductions which, admittedly, were fraudulently claimed. The Office of Tax Appeals is an administrative agency and we have no authority under the constitution to create policy exceptions to the Revenue and Taxation Code that would allow victims of a crime to claim tax deductions to which they are not entitled. (Cal. Const., Art. 3, § 3.5.) As such, the appeal is denied.

HOLDING

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

DISPOSITION

FTB's action is sustained.

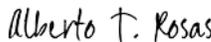
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Andrew J. Kwee
Administrative Law Judge

We concur:

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Administrative Law Judge

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Alberto T. Rosas
Administrative Law Judge