

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18113970
MARISSA J. GARCIA)
) Date Issued: September 27, 2019
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OPINION

Representing the Parties:

For Appellant: Marissa J. Garcia

For FTB: Eric A. Yadao, Tax Counsel III

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Marissa J. Garcia appeals from the action of the Franchise Tax Board (FTB) in proposing additional tax of \$1,521 for 2013 and \$1,129 for 2014, plus applicable interest.

Appellant waived her right to an oral hearing, so this matter was decided based on the written record.

ISSUE

Has appellant shown error in FTB’s proposed assessments of additional tax for tax years 2013 and 2014?

FACTUAL FINDINGS

1. Appellant filed timely California income tax returns for 2013 and 2014, using her See Drive address. For 2013, appellant reported California adjusted gross income (AGI) of \$54,914, itemized deductions of \$33,806, taxable income of \$21,108, total tax of \$303, withholding credits of \$2,912, and an overpayment of \$2,609. FTB records showed withholding credits of \$2,913 rather than \$2,912, so FTB issued a refund of \$2,610. For 2014, appellant reported California AGI of \$41,700, itemized deductions of \$38,858,

taxable income of \$2,842, zero tax, withholding credits of \$1,179, and an overpayment of \$1,179. FTB applied the overpayment to appellant's outstanding tax liability for the 2009 tax year.

2. On September 8, 2016, FTB received federal tax information from the Internal Revenue Service (IRS) indicating that the IRS had audited appellant's federal tax returns for 2013 and 2014 and determined that appellant's federal taxable income should be increased by \$25,429 for 2013 and by \$34,263 for 2014.¹ On August 25, 2017, FTB applied those federal income determinations to appellant's California income tax returns and issued a Notice of Proposed Assessment (NPA) for each year, addressed to appellant's See Drive address. For 2013, FTB proposed additional gross income of \$6,689 and to disallow Schedule A deductions of \$18,740. The NPA for 2013 proposed to increase appellant's California taxable income by \$25,429, resulting in an increase of \$1,521 in appellant's California tax liability. For 2014, FTB disallowed Schedule A deductions of \$37,268 and also disallowed the remaining itemized deductions of \$1,590, in order to allow the standard deduction of \$3,992 instead. The NPA for 2014 proposed to increase appellant's California taxable income by \$34,866, resulting in an increase of \$1,129 in appellant's California tax liability. Appellant apparently protested both NPAs but the protest letters, if any, have not been provided for this appeal.
3. FTB affirmed the NPAs by means of Notices of Action dated September 27, 2018. Appellant filed this timely appeal to the Office of Tax Appeals, stating in pertinent part, "I do not owe you for these tax years. I never received a breakdown of what you say I owe."

DISCUSSION

R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. FTB's determination is presumed correct and the taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, (2001-SBE-001) 2001 WL 37126924, *Appeal*

¹ For 2013, the IRS disallowed \$2,500 in cash contributions, \$2,500 in other contributions, and \$16,106 in unreimbursed employee expenses; the IRS also added long-term capital gains of \$7,000. For 2014, the IRS disallowed \$4,978 in cash contributions and \$32,576 in other expenses subject to the 2% AGI limitation; the IRS allowed the federal standard deduction of \$6,200. Detailed information about the reasons for these IRS adjustments and the documentation provided for the federal audit, if any, has not been submitted for this appeal.

of Sheldon I. and Helen E. Brockett (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Appeal of Don S. Cookston*, (83-SBE-048) 1983 WL 15434.)

In this appeal, FTB's proposed assessments were based on federal determinations pursuant to a federal audit. In response to the NOA issued by FTB, appellant has merely asserted that "I do not owe you for these tax years. I never received a breakdown of what you say I owe."

We first note that the NPAs issued were both sent to appellant's last known address, as reflected on returns filed by appellant for each year. The NPAs specified the nature of each adjustment and noted the adjustments were made based on information provided by the IRS.

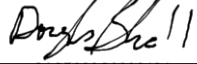
Appellant has not shown that the federal determinations were incorrect or that FTB applied them incorrectly to calculate the proposed assessments at issue here. Appellant has not provided any documentation related to the IRS audit or any of the items that may be in dispute, so we have no ability to evaluate whether errors may have occurred during that audit. Appellant has not provided *any* evidence, explanation, or information to support her position. Therefore, we have no evidentiary basis to overturn FTB's determination with respect to the proposed assessments or to question the basis of the federal adjustments.

HOLDING


Appellant has not shown error in the proposed assessments of additional tax for tax years 2013 or 2014.

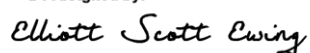
DISPOSITION

FTB's proposed assessments are sustained.

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Douglas Bramhall
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge