

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010677
DONNA L. LAYSSARD)
) Date Issued: August 16, 2019
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OPINION

Representing the Parties:

For Appellant: Craig Shaltes, Tax Appeals Assistance Program (TAAP)

For Respondent: Rachel Abston, Senior Legal Analyst

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Donna L. Layssard (appellant) appeals an action by respondent Franchise Tax Board (FTB) on a proposed assessment of \$894 in additional tax, plus applicable interest, for the 2013 tax year.

Appellant waived her right to an oral hearing and therefore this appeal is being decided on the written record.

ISSUE

Whether appellant demonstrated error with the proposed assessment, which is based upon federal adjustments.

FACTUAL FINDINGS

1. Appellant filed a 2013 California income tax return, reporting wages of \$2,122 and a federal adjusted gross income (AGI) of \$5,889.
2. Subsequently, FTB received information via a federal audit report, showing that the Internal Revenue Service (IRS) increased appellant’s 2013 federal AGI by several items,

- including: interest of \$103; ordinary dividends of \$345; qualified dividends of \$870; and pension/annuity income of \$27,589.
3. On January 20, 2016, FTB issued a Notice of Proposed Assessment (NPA) that applied the federal adjustments by adding \$28,907 to appellant's 2013 California taxable income. The NPA also included a 2.5 percent premature distribution tax of \$149, for a total additional tax of \$894, plus applicable interest.
 4. Appellant timely protested the NPA, and FTB denied her protest. This timely appeal followed.

DISCUSSION

A taxpayer must report federal changes to income or deductions to FTB within six months of the date the federal changes become final. (R&TC, § 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes, and any California deficiency assessment based thereon, are erroneous. (R&TC, § 18622(a); *Appeal of Sheldon I. and Helen R. Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as including "all income from whatever source derived" including pensions. Generally, a distribution from a qualified retirement plan or an Individual Retirement Account (IRA) is included in income for the year of distribution. (IRC, §§ 402(a) & 408(d).)

Under IRC sections 1015 and 691(a)(3), an inherited IRA or pension is considered inherited income and not inherited property. As such, the inherited income does not receive a stepped-up basis and the recipient retains the basis the decedent had in the IRA or pension. California follows this treatment under R&TC sections 18031 and 17731.

IRC section 72(t)(1) imposes a 10 percent premature distribution tax (in addition to income taxes otherwise imposed) on early withdrawals from qualified retirement plans and IRA's, with stated exceptions. R&TC section 17085(c)(1) adopts and modifies IRC section 72(t)(1), such that the premature distribution tax is 2.5 percent for California purposes.

Here, the IRS information shows that appellant received several items of income, totaling \$28,907, and that the IRS assessed applicable tax on that income. There is no evidence that the IRS cancelled or reduced its assessment. These adjustments also apply for California tax

purposes, and FTB properly imposed the corresponding additional tax. FTB’s use of information from the IRS is both reasonable and rational (see *Appeal of Sheldon I. and Helen R. Brockett, supra*; *Appeal of Aaron and Eloise Magidow, supra*), and appellant has not provided evidence demonstrating error in the IRS’ adjustments (as set forth in appellant’s federal transcript dated March 16, 2017) or in the California assessment based thereon.


Appellant asserts that she inherited the pension income from her deceased mother, and that appellant used it to pay for her mother’s funeral expenses and debts. Appellant contends that she should be able to deduct those amounts from her taxable income. However, appellant owes tax on the pension income even though she inherited it (R&TC, §§ 17731, 18031), and appellant has not provided any evidence (i.e., receipts, cancelled checks, funeral contracts, etc.) substantiating any funeral or other expenses. Further, we note that funeral expenses are generally non-deductible personal expenses. (See *Schroeder v. Commissioner*, T.C. Memo. 1997-517.) Accordingly, we conclude that appellant has failed to establish that any reductions to the liability are warranted.

HOLDING

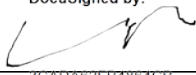
Appellant has not demonstrated error with the proposed assessment, which was based upon federal adjustments.

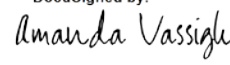
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge