

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

In the Matter of the Appeal of:  
**JOHN P. COVINGTON**

) OTA Case No. 18042749  
)  
) Date Issued: November 14, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Susan Berkowitz, E.A.

For Respondent: Di T. Nguyen, Graduate Legal Assistant

N. ROBINSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, John P. Covington (appellant) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$1,776 of additional tax, and applicable interest, for the 2012 tax year.

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

**ISSUE**

Has appellant established that FTB erred in proposing additional tax based on a federal determination?

**FACTUAL FINDINGS**

1. Appellant filed a timely California Resident Income Tax Return (CA Form 540) for 2012.
2. On December 7, 2015, FTB received information that the Internal Revenue Service (IRS) had audited appellant’s 2012 federal return and reduced Schedule A, miscellaneous itemized deductions by \$19,110.
3. The IRS increased appellant’s taxable income by \$19,110 and correspondingly increased appellant’s federal tax liability.
4. Appellant did not notify FTB of the IRS adjustments.

5. FTB adjusted appellant's 2012 return based on the federal adjustments and issued a Notice of Proposed Assessment (NPA) proposing to reduce appellant's itemized deductions by \$19,110 and assessing additional tax of \$1,776, plus interest.
6. On January 19, 2017, appellant protested the NPA by stating that he had petitioned the IRS requesting that it reconsider its audit determination. FTB responded with a July 5, 2017 letter stating that the information provided by appellant was insufficient to show that the IRS had reduced or cancelled the additional tax it assessed. FTB allowed appellant until August 4, 2017, to provide additional information or FTB would affirm the NPA.
7. On October 16, 2017, appellant informed FTB that his representative was working with the IRS for a quick resolution of his petition for audit reconsideration.
8. On November 28, 2017, FTB issued a Notice of Action (NOA) affirming the November 21, 2016 NPA.
9. Appellant filed a timely appeal from the NOA.

#### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall report federal adjustments to FTB and either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency determination based on a federal audit report is presumptively 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; *Appeal of Freemon and Dorothy Thorpe* (87-SBE-072) 1987 WL 50200.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing error in FTB's determinations, such determinations must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer* (80-SBE-154) 1980 WL 5068.) A taxpayer's failure to produce evidence that is within his or her 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.) Deductions from gross income are a matter of legislative grace, and a taxpayer has the burden of proving entitlement to all of the deductions claimed.

(*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440; *Appeal of James C. and Monablanche A. Walshe* (75-SBE- 073) 1975 WL 3557.)

OTA processed appellant’s December 27, 2017 letter as a timely appeal from the November 28, 2017 NOA.<sup>1</sup> In this correspondence, appellant alleges that his representative is working with the IRS to adjust his liability for 2012 and therefore, appellant requested a deferral from state action until the IRS makes a final determination on whether he may claim a deduction for home office expenses. Appellant requested and received multiple extensions, but ultimately did not provide any evidence showing error in FTB’s proposed assessment, or the federal adjustments upon which it is based. According to the February 12, 2019 IRS Account Transcript appellant paid his federal liability in full with no modification made to appellant’s federal liability after December 7, 2015. Therefore, there is no evidence upon which we may rely to overturn FTB’s deficiency determination.

HOLDING

Appellant has not shown that FTB’s deficiency determination is erroneous.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Neil Robinson*  
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Neil Robinson  
Administrative Law Judge

We concur:

DocuSigned by:  
*Teresa A. Stanley*  
0CC6C6ACC8A44D...  
Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
0C90542BE88D4E7...  
Tommy Leung  
Administrative Law Judge

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<sup>1</sup> On protest, appellant stated that his dispute with the IRS in 2010, 2011, 2012 and 2013 involved a disallowed deduction for home office expenses. Appellant alleges that for years 2010, 2011, and 2013 the IRS reinstated his home office deduction resulting in zero tax due.