

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
DICKIE DO

) OTA Case No. 18124053
)
) Date Issued: November 21, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Dickie Do

For Respondent: Freddie C. Cauton, Legal Analyst

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Dickie Do appeals an action by the respondent Franchise Tax Board (FTB) proposing additional tax of \$563, plus applicable interest, for the 2014 taxable year. Appellant waived his right to an oral hearing. Consequently, we decide the matter based on the written record.

ISSUE

Is appellant entitled to a reduction of FTB’s assessment of additional tax, plus interest, allegedly due for the 2014 taxable year?

FACTUAL FINDINGS

1. Appellant, who was under 59 and one-half years of age during 2014, received an early distribution of \$22,516¹ from a qualified retirement plan during that taxable year. The Form 1099-R for 2014 indicated that the distribution was an early distribution with no known exception.² The payor withheld estimated federal and California income taxes

¹ Amounts are rounded.

² The form explains that number “1” in Box 7 on the face of the form means “Early distribution (except Roth), no known exception,” which means that the distribution would be subject to an additional early distribution tax.

- due in connection with the distribution, but did not withhold any additional taxes due as a result of the distribution being early (i.e., before appellant had reached 59 and one-half years of age).
2. Appellant timely filed a California Resident Income Tax Return (FTB Form 540) for the 2014 taxable year, reporting federal adjusted gross income (AGI) of \$33,316, itemized deductions of \$9,102, taxable income of \$24,214, and tax of \$523. After applying exemptions and California tax withholdings, appellant reported an overpayment to FTB of \$368, which FTB refunded to appellant.
 3. Appellant included the early distribution in reported income on his 2014 federal and California returns and reported a 10-percent additional early distribution tax due on his federal return. The 2014 FTB Form 540 instructed appellant to report additional taxes due for early distributions from qualified retirement plans using the FTB Form 3805P, but appellant did not submit that form for 2014 or pay additional taxes due in California for the early distribution.
 4. FTB issued a Notice of Proposed Assessment (NPA) to adjust appellant's California return by including the additional 2.5-percent tax for the early distribution of \$563, plus interest.
 5. Appellant protested the NPA on the grounds that federal and state taxes were withheld from the distribution at appellant's request.
 6. FTB denied the protest and, on November 13, 2018, issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

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 IRA is included in income for the year of distribution. (IRC, §§ 402(a) & 408(d).)³ IRC section 72(t)(1) imposes an additional 10-percent tax on early withdrawals from qualified retirement plans and IRA's, with certain exceptions not applicable here. R&TC section 17085(c)(1) adopts and modifies IRC section 72(t)(1) by reducing the early distribution tax to 2.5 percent for California tax purposes.

³ R&TC sections 17501 and 17504 incorporate IRC section 402 in relevant part. R&TC sections 17507 and 17508 incorporate IRC section 408 in relevant part.

Appellant reported and paid the additional 10-percent federal tax, but did not report or pay the additional 2.5-percent California tax. Therefore, we find that FTB’s actions to assess that additional tax, plus interest, were legally correct.

Appellant contends that the distribution payor withheld federal and California income taxes from the amount distributed. Appellant is correct, and he has been given credit for the withheld amounts. However, the withheld California tax amounts were not sufficient to satisfy appellant’s corrected tax liability.

HOLDING

Appellant is not entitled to a reduction of FTB’s assessment of additional tax, plus interest, due for the 2014 taxable year.

DISPOSITION

FTB’s actions to assess the additional tax, plus interest, are sustained.

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
John O. Johnson
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John O. Johnson
Administrative Law Judge