

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
PHYLLIS ADOLPHUS

) OTA Case No. 19034381
)
) Date Issued: November 20, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Phyllis Adolphus

For Respondent: Rachel Abston, Senior Legal Analyst

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Phyllis Adolphus (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$58 for the 2012 taxable year.¹

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

ISSUE

Has appellant shown that FTB’s assessment, which was based on a federal determination, was incorrect?²

FACTUAL FINDINGS

1. Appellant filed a late 2012 California tax return, on February 12, 2014. FTB accepted the return as filed and refunded the claimed overpayment of \$104.
2. Thereafter, FTB received information that the Internal Revenue Service (IRS) had adjusted appellant’s tax account due in part to appellant’s receipt of \$25,360 of

¹ FTB initially assessed \$2,673 in tax. Subsequently, appellant filed an amended California return showing tax of \$2,615. FTB treated the amended return as a claim for refund of \$58.

² Appellant did not request abatement of the late-filing penalty or the premature distribution tax assessed by FTB, and we do not address those assessments herein.

- unreported, taxable pensions or annuities; \$2,292 of unemployment compensation; and \$647 of non-employee compensation. On May 19, 2016, FTB issued appellant a Notice of Proposed Assessment (NPA) that was based on the IRS adjustments, proposing \$2,673 in tax. Appellant did not respond to the NPA, and the assessment became final.
3. FTB took collection actions against appellant and collected the full amount due, including tax, penalties, and interest on or before April 11, 2018.
 4. On October 15, 2018, appellant filed an amended California personal income tax return, on which she included most of the items that were previously not reported on the original return. Appellant did not include \$647 of non-employee compensation reported by Solheim Lutheran Home on a Form 1099-MISC.
 5. FTB treated appellant's amended return as a claim for refund. FTB denied the claim for refund on January 14, 2019.
 6. Appellant's timely appeal simply states: "I did mail the 2012 taxes but apparently I mailed it to the wrong dept. and address. I mailed it to the IRS (federal) instead of the state."

DISCUSSION

R&TC section 18622(a) requires that taxpayers report federal adjustments to FTB and either concede the accuracy of a federal determination or state why it is erroneous. A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Generally, California conforms to the definition of "gross income" contained in section 61 of the Internal Revenue Code (IRC).³ Gross income is defined as "all income from whatever source derived," unless specifically excluded. (IRC, § 61(a).)

Here, FTB obtained federal information showing the IRS adjusted appellant's 2012 federal income tax return based in part on unreported, taxable pension or annuity income; unreported unemployment compensation; and unreported non-employee compensation. Based on the federal information, FTB adjusted appellant's 2012 California tax account, proposing

³ See R&TC section 17071.

additional tax, penalties, and interest. Appellant did not respond to the NPA, and FTB undertook collection actions against appellant and collected the full amount of the assessed liability.

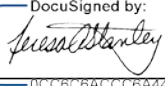
Appellant did not submit any evidence that FTB’s assessment was incorrect. On the contrary, evidence in the record shows clearly that appellant failed to include, on the original return, taxable income that was received. It appears that appellant attempted to correct the underreported income in October 2018; however, the corrected return still did not include \$647 in reported non-employee compensation. Appellant asserts that the return was accidentally mailed to the IRS instead of to FTB. To the extent that assertion may be considered an argument that appellant had reasonable cause for her failure to timely or correctly file her return, we note that there is no reasonable cause exception to the payment of tax.⁴ The only authority we have is to determine the correct amount of an appellant’s California personal income tax liability for the appeal year at issue. (*Appeals of Dauberger et al.* (82-SBE-082) 1982 WL 11759.) Absent argument and support that FTB improperly assessed the additional tax, appellant has not satisfied her burden of showing error in the assessment. Therefore, there is no basis for a refund for 2012.

HOLDING


Appellant has not established that FTB’s assessment, which was based on a federal determination, was incorrect.

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

DocuSigned by:

0CC8C8ACCC6A44D
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

2281E8D466014D1
Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

7B28A07A7E0A43D
Daniel K. Cho
Administrative Law Judge

⁴ While reasonable cause may be considered when a penalty for the late payment or filing of a return is at issue, appellant has not contested any penalty on appeal.