

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

In the Matter of the Appeal of: ) OTA Case No. 19034482  
**JALVERMAN P. POWE** )  
 ) Date Issued: October 29, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Jalverman P. Powe

For Respondent: Angelina Yermolich, Legal Assistant

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

D. BRAMHALL, Administrative Law Judge: This appeal is made pursuant to section 19045 of the Revenue and Taxation Code (R&TC) from the action of respondent Franchise Tax Board (FTB) on appellant’s protest against a proposed assessment of additional tax in the amount of \$578, plus applicable interest, for the 2014 tax year.

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

**ISSUE**

Whether appellant has demonstrated error with the proposed assessment of additional tax based on an early distribution from a qualified retirement plan.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2014 California income tax return, reporting federal adjusted gross income (AGI) of \$39,928 and an overpayment of \$462, which FTB refunded on April 13, 2015.
2. Subsequently, a review of appellant’s California return (including a Form 1099-R filed therewith) indicated that appellant had received an early distribution of \$23,131 from a qualified retirement plan. Appellant reported a 10 percent early distribution tax on her

- federal return but did not report the applicable California 2.5 percent early distribution additional tax on her California return.
3. On May 15, 2018, FTB issued a Notice of Proposed Assessment (NPA) that adjusted appellant's return to include the 2.5 percent additional tax on an early distribution. The NPA proposed an additional tax of \$578, plus applicable interest. The additional tax of \$578 was computed as 2.5 percent of the early distribution amount of \$23,131.
  4. In response, appellant filed a timely protest.
  5. In a letter dated December 4, 2018, FTB noted that its records indicated that appellant was younger than 59 1/2 when the distribution was made in 2014 and that as a California resident appellant is subject to the additional 2.5 percent tax on an early distribution from a qualified retirement plan.
  6. After receiving no further information, FTB affirmed the NPA in a Notice of Action.
  7. 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 is included in income for the year of distribution. (IRC, § 402(a).)

IRC section 72(t)(1) imposes a 10 percent additional tax (in addition to income taxes otherwise imposed) on early withdrawals from qualified retirement plans, with stated exceptions. R&TC section 17085(c)(1) adopts and modifies IRC section 72(t)(1), such that the additional tax is 2.5 percent for California purposes.

Appellant contends that she does not agree with the NPA because she had filed the applicable return online using FTB's CalFile software and had entered all of the information as prompted. Appellant asserts that she is being penalized for using the CalFile system.

In turn, FTB asserts that FTB's CalFile website states that if a taxpayer owes "tax on an early distribution from an IRA or other retirement plan" the taxpayer cannot use FTB's CalFile software. FTB further asserts that when appellant entered her Form 1099-R information, appellant failed to include pertinent information regarding the applicable pension income, such as the payer, the recipient, the gross distribution amount (box 2), the taxable amount (box 2a), and the type of distribution (box 7). FTB also asserts that the Form 1099-R that was filed with

appellant's return lists a distribution code of 1, meaning that the distribution was an early distribution with no known exception to taxable status. FTB states that to verify the Form 1099-R information, FTB obtained a copy of appellant's Wage and Income Transcript (wage transcript), which shows that appellant received a taxable distribution of \$23,131.

FTB's use of information (i.e., the Form 1099-R, appellant's federal tax return and appellant's wage transcript) is both reasonable and rational (see *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), and appellant has not provided any evidence demonstrating that the distribution of \$23,131 was not taxable. Accordingly, FTB properly determined that appellant owed the additional tax at issue. The burden thus is upon appellant to establish error in FTB's determination.

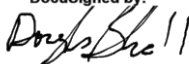
The only ground for appellant's appeal is that she is being penalized for using the CalFile system. However, we find that appellant failed to follow the instructions for use of the system – instructions that inform a taxpayer they are not qualified to use CalFile if they have income from an early distribution for an IRA or other retirement plan. Appellant offers no arguments or evidence that FTB's application of the law is incorrect. Furthermore, we note that FTB did not impose any penalties with the proposed assessment at issue here, and therefore appellant is not being penalized but rather is asked to pay the proper amount of tax due as should have originally been reported, plus interest. Accordingly, appellant has not met her burden to show error in FTB's determination that she is subject to the 2.5 percent additional tax on the early distribution.

HOLDING


Appellant has not demonstrated error with the proposed assessment of additional tax based on an early distribution from a qualified retirement plan.

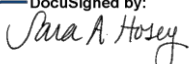
DISPOSITION

FTB's action is sustained.

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Douglas Bramhall  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

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Sara A. Hosey  
Administrative Law Judge