

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19024333
DIETER STEFANON AND)
KARIN KAY NELSON-STEFANON)
_____)
)

OPINION

Representing the Parties:

For Appellants: Dieter Stefanon and
Karin Kay Nelson-Stefanon

For Respondent: Freddie C. Cauton, Legal Analyst

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

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue & Taxation Code (R&TC) section 19045(a), appellants Dieter Stefanon and Karin Kay Nelson-Stefanon appeal the action of respondent Franchise Tax Board (FTB) in denying their protest of a proposed assessment in the amount of \$23,465 in additional tax, plus applicable interest, for the 2013 tax year.

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

ISSUE

Whether appellants have demonstrated error in FTB’s proposed assessment, which is based upon a federal adjustment.

FACTUAL FINDINGS

1. Appellants filed a 2013 California income tax return, reporting federal adjusted gross income (AGI) of \$148,378, itemized deductions of \$17,075, taxable income of \$131,303,

- and a tax of \$7,336. After applying personal/dependency exemptions of \$864 and a California withholding credit of \$4,601, appellants' tax due was \$1,871.
2. Because appellants sent FTB a payment of \$25,359 instead of the \$1,871 tax due as reflected on their return, FTB mailed a refund for the difference of \$23,488 to appellants on May 30, 2014. Appellants did not cash the refund check.
 3. Subsequently, FTB received information from the Internal Revenue Service (IRS), showing that appellants reported a federal AGI of \$393,198 on their 2013 federal return, even though, as noted above, the federal AGI reported on appellants' 2013 California return was listed as \$148,378, a difference of \$244,820.
 4. On December 26, 2017, FTB issued a Notice of Proposed Assessment (NPA), which revised the reported federal AGI on appellants' 2013 California return from \$148,378 to \$393,198. Further, the NPA made an adjustment to itemized deductions of negative \$248 and limited appellants' California itemized deductions by \$2,630. The NPA revised appellants' taxable income to \$378,753 and proposed an additional tax of \$23,465, plus applicable interest.¹
 5. Appellants filed a timely protest, along with unsigned copies of 2013 state and federal returns which they assert were filed, reflecting California taxable income of \$378,751, and additional taxes due of \$25,336, which appellants noted they had previously paid \$25,336 to FTB. Appellants requested that FTB recheck appellants' 2013 state and federal returns because appellants believed that their California and federal returns listed the same federal AGI amount. Appellants further stated that, while they received the FTB's \$23,488 refund check in May of 2014, on advice of their accountant, they had not cashed that check. In addition, appellants had attached a copy of the refund check to their protest letter.
 6. In response, FTB sent appellants a letter dated April 11, 2018, noting that the parties now agreed on appellants' California tax liability for 2013, although issues remained as to the amounts paid. As for appellants' statement that they still had possession of the refund check, FTB requested that appellants return the refund check so that the amount therein could be credited back to appellants' account.

¹ Interest was suspended in accordance with R&TC section 19116.

7. Later, FTB affirmed the NPA in a Notice of Action. The NOA acknowledges FTB received the refund check of \$23,488 from appellants on April 15, 2018. The NOA states that appellants' account will be revised to reflect that the refund check has been returned. Further, the NOA states that the total additional tax and interest listed as being due in the NOA does not reflect the refund amount. In response, appellant filed this timely appeal.

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 Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, the proposed assessment must be upheld. (*Appeal of Seltzer* (80 SBE-154) 1980 WL 5068.)

Appellants contend that they are entitled to a refund of \$1,894, which they state is the difference between the amount they paid with their California return of \$25,359 and the additional tax set forth in the NPA of \$23,465 ($\$25,359 - \$23,465 = \$1,894$).

In turn, FTB contends that the NPA correctly conforms to the federal AGI reported on appellants' 2013 federal return. Further, FTB asserts that the NPA correctly lists a total tax of \$29,937 and a credit for the tax appellants previously paid on their return of \$6,472, which FTB contends results in an additional tax due of \$23,465 and FTB notes this is the same additional tax shown in the NPA and the NOA.

Here, FTB's use of information from the IRS is both reasonable and rational (see *Appeal of Brockett, supra*; *Appeal of Magidow, supra*), and appellants have not provided evidence demonstrating error with the IRS's adjustment or in the California proposed assessment based thereon. In particular, we note that appellants have not argued (or provided any evidence showing) that their federal AGI was not \$393,198, as reflected on appellants' 2013 federal return.

As for appellants’ return of the refund check of \$23,488, FTB states that once appellants file a Replacement Warrant Claim (Form 3900-A) to replace the stale warrant of \$23,488, FTB will process the claim on an expedited basis and will allow the credit as soon as it is available.

HOLDING

Appellants have not demonstrated error in FTB’s proposed assessment, which was based upon a federal adjustment.

DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

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Patrick J. Kusiak
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Patrick J. Kusiak
Administrative Law Judge

DocuSigned by:
Nguyen Dang
4D465973EB44469...
Nguyen Dang
Administrative Law Judge

Date Issued: 12/20/2019