

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
MELISSA D. MEEKINS

) OTA Case No. 19034458
)
) Date Issued: December 12, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Melissa D. Meekins

For Respondent: David Kowalczyk, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Melissa D. Meekins (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax, penalties and interest for the 2013 tax year.

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

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessment, which is based on a federal audit determination.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return for 2013. That return was largely based upon the income and deductions reported on her federal income tax return for the same year.
2. The Internal Revenue Service (IRS) audited appellant’s 2013 federal income tax return. The audit resulted in the IRS adjusting appellant’s income and deductions, determining a tax deficiency. Specifically, the IRS disallowed certain itemized deductions and then allowed appellant the standard deduction instead.

3. FTB then issued appellant a Notice of Proposed Assessment (NPA) and proposed to make conforming state adjustments as a result of the final federal assessment, resulting in proposed additional tax of \$1,717, plus applicable interest.
4. Appellant timely filed a protest of the NPA, stating that her tax preparer falsely prepared her tax return and claimed itemized deductions without her knowledge. She further stated that she had always claimed the standard deduction instead of itemizing her deductions.
5. At the conclusion of the protest, FTB proposed to disallow appellant's itemized deductions on her California return because the IRS disallowed the corresponding itemized deductions on her federal return.
6. Prior to closing the protest, FTB requested appellant indicate whether she agreed with the IRS determination or provide evidence to show the IRS determination was incorrect or had been changed or eliminated. Appellant did not respond to that request and FTB issued a Notice of Action affirming its NPA. Appellant then timely filed this appeal.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) A proposed deficiency assessment (whether it be of tax or penalties) that is based on a federal audit is presumptively correct and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

When a proposed FTB assessment is based on a final federal adjustment, taxpayers can satisfy their burden of proof in one of two ways. They can either show that the IRS has changed or eliminated its adjustments, or they can produce evidence that the IRS's and/or FTB's adjustments are incorrect or inapplicable.

Appellant has not shown that FTB's adjustments premised on the federal adjustments were incorrect or that the IRS has changed its income determination. If the IRS eventually does reconsider and change its audit determination for the year at issue, the law permits appellant to notify FTB at the time of the federal changes and request that FTB make corresponding state changes. (See R&TC, §§ 18622, 19311.) We do note that the record indicates that appellant entered into an offer in compromise with the IRS following the close of the IRS audit and made all required payments under the offer in compromise. However, appellant has not shown that the

offer in compromise entered into with the IRS was based upon a redetermination of appellant’s income for the year at issue, as opposed to appellant’s inability to full-pay the amount due to the IRS.¹ Accordingly, appellant has not sustained her burden of proving that the IRS adjusted the substance of its audit determination for 2013.

HOLDING

Appellant has not demonstrated error in the FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:
Jeffrey I. Margolis
5E9822EBB1BA41B
Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7
Sara A. Hosey
Administrative Law Judge

¹ The only information we have before us regarding appellant’s federal offer in compromise is the fact that it is referenced in the IRS Account Transcript. An IRS Form 886-A, Explanation of Items, provided to us by FTB, shows that the only adjustment to appellant’s federal liability was abatement of a penalty and no reduction to tax is indicated. As mentioned previously, the FTB did not impose any penalties, thus no corresponding state adjustment is necessary.