

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19034519
MICHAEL E. SAYLOR) Date Issued: December 4, 2019
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OPINION

Representing the Parties:

For Appellant: Michael E. Saylor, Taxpayer

For Respondent: Freddie C. Cauton, Legal Analyst

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324, Michael E. Saylor (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund for the 2014 tax year. This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether appellant established a basis for deducting from his California adjusted gross income (AGI) \$3,072 in state income taxes that he paid during 2014?

FACTUAL FINDINGS

1. On March 19, 2015, appellant timely filed a 2014 California Resident Income Tax Return (Form 540) reporting federal AGI of \$38,635, and claiming no California adjustments. Appellant’s reported federal AGI consisted of \$18,030 in wages and a taxable distribution of \$20,906 from a qualified retirement plan, less a student loan interest deduction of \$301.
2. Appellant separately filed a timely Federal Individual Income Tax Return (Form 1040) reporting federal adjusted gross income AGI of \$38,635.

3. During 2014, in addition to the amounts reported on his state and federal income tax returns, appellant also received \$10,900 in ordinary dividends, \$595 in short-term capital gains, \$14,633 in long-term capital gains, and \$6,616 in capital gain distributions.
4. The Internal Revenue Service (IRS) reviewed appellant's return for unreported income. Based on its review, the IRS determined that appellant failed to report all of his gross income on his 2014 federal income tax return. Thereafter, the IRS made an adjustment to appellant's federal AGI, increasing it to \$71,513.
5. On November 21, 2016, the IRS assessed additional tax in connection with the federal adjustment. The IRS also reported to FTB that it had made this adjustment to appellant's 2014 federal tax return.
6. FTB issued a Notice of Proposed Assessment (NPA) on November 15, 2017, making a \$17,514 adjustment (i.e., including the ordinary dividends and capital gain distributions, but excluding the short- and long-term capital gains). Based on this adjustment, the NPA proposed additional tax of \$1,312, plus interest.
7. Appellant did not timely protest the NPA and it became final.
8. On April 13, 2018, appellant filed amended state and federal income tax returns reporting all the additional income, and claiming certain deductions. Shortly thereafter, appellant full-paid the state income tax liability on May 3, 2018, in the amount of \$1,450.78 (representing \$1,312 in tax, plus \$138.78 in interest).
9. By letter dated October 26, 2018, FTB accepted appellant's amended state income tax return filed on April 13, 2018, as a timely claim for refund in connection with his May 3, 2018 payment.
10. On January 7, 2019, FTB denied appellant's claim for refund because the IRS did not adjust its federal determination to accept the amounts claimed by appellant on his amended state tax return.
11. Appellant timely appealed FTB's action on March 7, 2019, on the basis it was premature to deny his claim because the IRS was still reviewing his amended federal tax return.
12. On March 25, 2019, the IRS adjusted appellant's federal AGI to \$55,014.
13. On May 9, 2019, appellant faxed a copy of his IRS account transcript reflecting the federal adjustment to FTB, and conceded that the federal determination was correct.

14. On July 22, 2019, FTB agreed to accept appellant's amended state tax return (i.e., the claim for refund) as filed, with one exception: FTB disallowed appellant's claimed California itemized deduction of \$3,072 for state income taxes paid to California on the basis that California does not allow this as an itemized deduction.¹ FTB's acceptance of the revised federal AGI (with the one exception of the state income tax issue) will result in a refund of \$217 in tax, plus applicable interest.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (Rev. & Tax. Code, § 17071; Int.Rev. Code, § 61(a).) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke* (80-SBE-059) 1980 WL 4988; *Appeal of J. Walshe and M. Walshe* (75-SBE-073) 1975 WL 3557.) Federal law allows an itemized deduction for, as relevant here, state and local income taxes. (Int.Rev. Code, § 164(a)(3).) California does not allow an itemized deduction for state income taxes. (Rev. & Tax. Code, § 17220(a).) Therefore, we conclude appellant is not entitled to deduct \$3,072 in state income taxes that he paid during 2014.

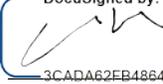
¹ As relevant, FTB concedes that appellant paid \$3,072 in state income taxes to FTB during 2014.

HOLDING

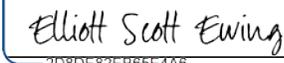
Appellant cannot deduct state income taxes on his state income tax return.

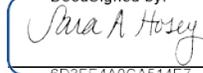
DISPOSITION

FTB’s proposed action denying appellant’s claim for refund is sustained, subject to FTB’s concession to revise appellant’s 2014 tax liability to make adjustments to AGI allowed by the IRS at the federal level, which will result in a refund or credit of \$217 in tax, plus applicable interest.

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge