

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19024300
CHARLES R. PETESCH)
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OPINION

Representing the Parties:

For Appellant: Charles R. Petesch
For Respondent: Rachel Abston, Senior Legal Analyst

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant Charles R. Petesch (Petesch) appeals respondent Franchise Tax Board’s (FTB) action proposing an assessment of \$4,361 in additional tax, plus interest, for the 2015 tax year. Petesch waived the right to an oral hearing and therefore we decide this matter based on the written record.

ISSUE

Did Petesch establish error in FTB’s proposed additional tax, which is based on federal adjustments?

FACTUAL FINDINGS

1. Petesch filed a timely 2015 California return, reporting a tax overpayment of \$4,972, which, per Petesch’s request, FTB applied to Petesch’s 2016 estimated tax.
2. The Internal Revenue Service (IRS) adjusted Petesch’s federal return: unreported ordinary dividends of \$20,747, capital gain dividends of \$5,544, nonemployee compensation of \$21,550, and the allowance of a self-employment tax deduction of \$915.

3. After FTB obtained this federal information, FTB issued a Notice of Proposed Assessment (NPA) that applied the federal adjustments to Petesch's California return and proposed additional tax of \$4,361, plus interest.
4. Petesch protested the NPA. FTB reviewed federal information showing that the IRS had neither canceled nor reduced their assessment. FTB issued a Notice of Action affirming the NPA.
5. Petesch timely appealed.

DISCUSSION

When the IRS makes changes to a taxpayer's income, the taxpayer must report those changes to FTB. (R&TC, § 18622.) A taxpayer must either concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) Under well-settled law, there is a presumption of correctness when FTB bases its deficiency assessment on a federal adjustment to income, and a taxpayer bears the burden of proving FTB's determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Lew* (78-SBE-073) 1978 WL 3876; *Appeal of Webb* (75-SBE-061) 1975 WL 3545.) The applicable burden of proof is by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs., tit. 18, § 30219(c).)

Based on the federal adjustments, FTB increased Petesch's taxable income by \$47,481, allowed a self-employment tax deduction of \$915, and proposed additional tax of \$4,361, plus interest. Petesch disputes and disagrees with FTB's determination, stating that he prepared the 2015 return using tax preparation software and has "no reason to believe it's inaccurate."

We see two reasons to believe Petesch's return is inaccurate: first, the IRS adjusted Petesch's federal return; second, FTB applied these federal adjustments to Petesch's California return. Although Petesch disputes ever receiving certain IRS and FTB correspondence, and although Petesch correctly points out that he received a refund of \$4,972 for 2015 (which FTB applied to the 2016 estimated tax, per Petesch's request), Petesch did not submit any evidence that may help meet his burden of proof and that may tend to show error in the federal adjustments. Additionally, Petesch provided no evidence indicating whether the IRS had canceled or reduced their assessment.

Therefore, Petesch did not prove that FTB's determination, based on a federal adjustment, is erroneous.

HOLDING

Petesch did not establish error on FTB’s part in proposing an additional tax based on a federal adjustment.

DISPOSITION

We sustain FTB’s action in full.

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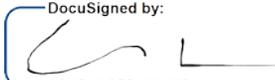


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Alberto T. Rosas
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 1/9/2020