

1. Appellants filed a timely joint 2014 California income tax return (Form 540), reporting a federal adjusted gross income of \$65,381, a California taxable income of \$12,655, and a total tax due of \$127. After reporting exemption credits of \$216, appellants reported a tax due of \$0.
2. Subsequently, FTB received information via a FEDSTAR IRS Data Sheet, indicating that the Internal Revenue Service (IRS) adjusted appellants' 2014 federal return. The

FEDSTAR IRS Data Sheet indicated that the IRS disallowed appellants' S corporation losses by \$43,225, which increased appellants' 2014 federal taxable income by the same. The IRS also imposed a federal accuracy-related penalty.

3. On January 25, 2018, FTB issued a Notice of Proposed Assessment (NPA) that increased appellants' California taxable income by \$43,225 to account for the federal adjustment.
4. In response, appellant filed a timely protest, asserting that FTB should delay its assessment because the IRS's audit had not yet concluded.
5. In a position letter dated October 1, 2018, FTB stated that information received from the IRS indicated that it had closed its examination of appellants' return and had not canceled or reduced its assessment.
6. After receiving no further information, FTB affirmed the NPA in a Notice of Action.
7. In response, appellants filed this timely appeal.

DISCUSSION

When FTB proposes additional tax, FTB's initial burden is to show that its assessment is reasonable and rational at which time the burden shifts to the taxpayer who has the burden of proving it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 509; *Appeal of Manriquez* (79-SBE-077) 1979 WL 4118.) California Code of Regulations, title 18, section 30219(c), states that unless otherwise provided by law, "the burden of proof requires proof by a preponderance of the evidence."

R&TC section 18622(a) provides that a taxpayer shall 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.*)

Appellants' July 2, 2019 correspondence asserts that the IRS audit is "still ongoing and not complete." Appellants, also, assert that the calculation of income and the amount of tax they have paid require no further adjustment on their part.

In response, FTB asserts that a recent copy of appellants' federal account transcript dated August 9, 2019, indicates that the IRS concluded its audit on October 16, 2017, without any

changes to the applicable federal adjustment.¹ Of note, the transcript also shows that appellants paid, in pertinent part, the IRS-assessed additional tax of \$5,758 and the accuracy-related penalty of \$1,151.60.

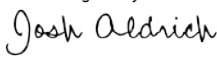
Here, FTB's use of information from the IRS is both reasonable and rational. (See *Appeal of Brockett, supra*; *Appeal of Magidow, supra*). FTB met its initial burden. Thus, appellants bear the burden to prove error by a preponderance of the evidence. Appellants have not provided any evidence demonstrating error in the IRS's adjustment to the 2014 tax return or in the California proposed assessment based thereon.

HOLDING

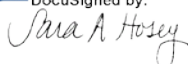
Appellants have not demonstrated error in FTB's proposed assessment or the federal determination upon which it is based.

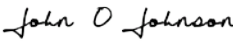
DISPOSITION

FTB's action is sustained.

DocuSigned by:

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Joshua W. Aldrich
Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7
Sara A. Hosey
Administrative Law Judge

DocuSigned by:

873D8797B9E64E1
John O. Johnson
Administrative Law Judge

Date Issued: 1/17/2020

¹ The August 9, 2019 IRS transcript for the 2014 tax year indicates that the IRS had originally opened the examination on April 29, 2016, and closed the examination August 8, 2016. Examination of the 2014 tax return, however, reoccurred on August 18, 2017. The (re)examination was closed on October 16, 2017.