

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18042561  
**JEREMIAH CARLSEN** )  
 ) Date Issued: December 19, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Jeremiah Carlsen

For Respondent: Anthony Epolite, Tax Counsel IV

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Jeremiah Carlsen (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s protest of a proposed assessment of \$10,102.00 additional tax, an accuracy-related penalty of \$2,020.40, and applicable interest for the 2012 tax year.

Appellant waived the right to an oral hearing, and therefore, we decide the matter based on the written record.

**ISSUES**

1. Has appellant shown error in FTB’s proposed assessment, which is based on federal adjustments?
2. Does the Office of Tax Appeals (OTA) have jurisdiction to consider whether appellant’s tax liability for the 2012 tax year was discharged in bankruptcy?

**FACTUAL FINDINGS**

1. The Internal Revenue Service (IRS) audited appellant for the 2012 tax year, resulting in adjustments to income and an accuracy-related penalty which increased appellant’s federal tax liability.
2. Based on those federal adjustments, FTB issued to appellant a Notice of Proposed Assessment (NPA) for the 2012 tax year.

3. Thereafter, appellant filed a chapter 7 bankruptcy petition, and on June 10, 2019, the bankruptcy court issued a general discharge order in appellant’s bankruptcy case.

### DISCUSSION

#### Issue 1 – Has appellant shown error in FTB’s proposed assessment, which is based on a federal determination.

R&TC section 18622(a) provides in pertinent part that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment based on a federal determination is presumptively correct, and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant contends that the federal determination, and thus FTB’s proposed assessment, is overstated because it fails to account for appellant’s many deductible expenses, which include “material” expenses and payments reportable on Form 1099-MISC. Appellant has not provided any further details regarding the amount or nature of his alleged expenses, much less any evidence proving that appellant is entitled to deduct those expenses. While appellant asserts that he provided substantiating documentation to the IRS, and that the IRS is currently reviewing those documents, appellant provided no evidence (nor does he assert) that any adjustments were actually made to his federal tax liability. Regardless, we are not bound by any federal determination, and thus, for appellant to prevail here, it was incumbent upon appellant to provide that alleged documentation for our consideration on appeal. (*Appeal of Pryke* (83-SBE-212) 1983 WL 15583.) Based on the foregoing, we conclude that appellant has not met his burden of establishing error in FTB’s proposed assessment.

#### Issue 2 – Does OTA have jurisdiction to consider whether appellant’s tax liability for the 2012 tax year was discharged in bankruptcy?

Appellant argues that FTB is barred from taking future collection action against appellant for the tax liability at issue, because it was discharged in bankruptcy.

OTA is without the authority to engage in preventive adjudication or to issue declaratory judgments. OTA’s Rules for Tax Appeals section 30103(a) expressly provides that OTA’s jurisdiction concerning income tax appeals is limited to considering appeals from *actions taken*

by FTB. Further, OTA has expressly declined to adopt sections 11465.10 through 11465.70 of the Administrative Procedure Act pertaining to the issuance of declaratory decisions. (Cal. Code Regs., tit. 18, § 30216(d).) This means that OTA is unable to address the legal rights of the parties based on hypothetical facts or events which may not occur, or as in the present case, have not yet occurred.

OTA also lacks subject matter jurisdiction to consider whether a taxpayer’s liability was discharged in bankruptcy. (See Cal. Code Regs., tit. 18, § 30103.) And, except in specific circumstances not present here, OTA does not have jurisdiction to consider actual or alleged violations of any substantive or procedural right by FTB, including those arising from FTB’s involuntary collection actions. (Cal. Code Regs., tit. 18, § 30104(d).)

Accordingly, we do not address the effect of the bankruptcy court’s discharge order on the collectability of appellant’s tax liability for the 2012 tax year.

HOLDING

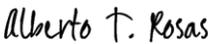
1. Appellant has not shown error in FTB’s proposed assessment.
2. OTA lacks jurisdiction to consider whether appellant’s 2012 tax liability was discharged in bankruptcy.

DISPOSITION

FTB’s action is sustained.

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 Nguyen Dang  
 Administrative Law Judge

We concur:

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 Alberto T. Rosas  
 Administrative Law Judge

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 Tommy Leung  
 Administrative Law Judge