

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. BROWN

) OTA Case No. 18042737
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OPINION

Representing the Parties:

For Appellant: Melissa Gonzalez, Tax Appeals Assistance Program

For Respondent: Donna L. Webb, Staff Operation Specialist

For Office of Tax Appeals: Tyler Zepp, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Brown (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,915 of additional tax and applicable interest for the 2013 tax year.

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment, which is based on a federal adjustment for unreported income.

FACTUAL FINDINGS

1. Appellant timely filed a 2013 California Resident Income Tax Return (Form 540).
2. Subsequently, the IRS sent FTB information that showed an adjustment was made to appellant’s federal tax return for unreported pension income of \$34,531.
3. Based on the IRS information, FTB issued a Notice of Proposed Assessment (NPA), increasing appellant’s income by the \$34,531 and proposing additional tax of \$2,915, plus applicable interest.

4. Appellant protested the NPA. Appellant stated that the IRS information was fraudulent. Appellant also stated that he had breaches of his personal information dating back to 2009.
5. FTB sent appellant a position letter explaining the proposed assessment was based on information sent to FTB by the IRS. Appellant sent a second letter stating that the proposed assessment was not acceptable. When no supporting information was provided by appellant, FTB issued a Notice of Action, affirming the NPA. This timely appeal followed.
6. On appeal, FTB submitted, as an exhibit to its opening brief, a Form 1099-R issued by Thrift Savings Plan (the company responsible for the pension payout), which reported that appellant had received a pension distribution in 2013 of \$34,531.
7. Appellant filed a reply brief in which he asserted that no pension funds were received in 2013 and that he was the victim of fraud. Appellant did not provide any new evidence in support of these claims.
8. In its reply brief, FTB reasserted that Thrift Savings Plan issued a Form 1099-R reporting that appellant received a pension distribution in 2013 of \$34,531, which was fully taxable. FTB also showed that appellant reported 1099-R income from the Thrift Savings Plan in 2012.

DISCUSSION

R&TC section 18622(a) states that a taxpayer must 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 audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Pursuant to R&TC section 17041(a)(1), California imposes a tax on the entire taxable income of every resident of the state. R&TC section 17071 provides that, except as otherwise provided, California conforms to the federal definition of "gross income" under Internal Revenue Code (IRC) section 61. IRC section 61(a)(9) and (11), in turn, provides that gross income means all income from whatever source derived, including income from pensions and annuities.

Because California incorporates IRC section 61, California residents who receive income from pensions and annuities must include these amounts in their taxable income for California tax purposes. Thus, when FTB received information from the IRS that appellant failed to report pension income of \$34,531.00 for the 2013 tax year, FTB properly proposed an assessment of additional tax of \$2,915.00 and applicable interest.

Appellant asserts that the IRS assessment is erroneous and fraudulent. However, appellant has failed to provide sufficient evidence to show that the IRS adjustment to appellant’s gross income is erroneous. Furthermore, FTB provided evidence showing that Thrift Savings Plan issued to appellant a Form 1099-R, reporting that he received a distribution of pension income in 2013 of \$34,531. Appellant has provided no documentary evidence, such as bank records or a corrected 1099-R, to rebut that Form 1099-R showed issuance of pension funds to appellant. Therefore, we find that appellant has failed to show error in FTB’s proposed assessment.

HOLDING

Appellant has failed to show error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
E. Scott Ewing
2D8DE82EB865E4A6...
Elliott Scott Ewing
Administrative Law Judge

Date Issued: 5/15/2020