

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. MUNOZ

) OTA Case No. 18053176
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OPINION

Representing the Parties:

For Appellant: C. Munoz

For Respondent: Freddie C. Cauton, Legal Analyst

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Munoz (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$1,544 of additional tax and applicable interest, for the 2013 tax year.

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

ISSUE

Whether appellant has shown error in respondent’s proposed assessment of additional tax for tax year 2013.

FACTUAL FINDINGS

1. Appellant filed a 2013 California income tax return, reporting federal and California adjusted gross income (AGI) of \$4,390, taxable income of \$484, and tax of \$5. After applying an exemption credit of \$106, a nonrefundable renter’s credit of \$60, and withholding credit of \$1,475, appellant reported a refund due of \$1,475.
2. FTB authorized a \$1,475 refund to appellant by direct deposit, which was issued on August 15, 2014.

3. The Internal Revenue Service (IRS) provided information to FTB indicating that appellant reported federal AGI of \$46,954 on his 2013 federal income tax return.
4. Subsequently, FTB obtained a copy of appellant's 2013 IRS Account Transcript which indicated that the IRS accepted appellant's federal AGI as \$46,954.
5. FTB issued a Notice of Proposed Assessment (NPA) on October 11, 2017. The NPA proposed additional tax of \$1,544, plus applicable interest, based on an increase to appellant's reported California AGI of \$42,564 (i.e., \$46,954 - \$4,390) and the disallowance of the nonrefundable renter's credit.¹
6. Appellant timely protested the NPA and submitted a copy of his 2013 Form W-2 indicating, in pertinent part, the following: 1) Wages, tips, other compensation of \$46,953.99; 2) Federal income tax withheld of \$4,390.96; and 3) California tax withheld of \$1,474.80.
7. FTB and appellant exchanged correspondence, summarized in the discussion below, over the next several months.
8. On April 16, 2018, FTB issued a Notice of Action (NOA) affirming its proposed assessment.
9. This timely appeal followed.

DISCUSSION

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state” R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB “stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable” R&TC sections 17071 and 17072 define “gross income” and “adjusted gross income” by referring to and incorporating Internal Revenue Code (IRC) sections 61 and 62, respectively. IRC section 61 provides that, unless otherwise provided, “gross income means all income from whatever source

¹ R&TC section 17053.5, subdivision (a)(1), provides qualified renters with a credit against his or her “net tax.” Single taxpayers are allowed a credit of \$60 if their AGI is \$25,000 or less. (R&TC, § 17053.5, subd. (a)(1)(A).) R&TC section 17053.5, subdivision (j), provides that FTB shall annually recompute the AGI amounts set forth in R&TC section 17053.5, subdivision (a). For tax year 2013, single taxpayers were allowed a credit of \$60 if their AGI was \$36,955 or less. (2013 California Personal Income Tax Booklet, at p. 19.) Since the NPA increased appellant's California AGI to \$46,954, FTB disallowed appellant's nonrefundable renter's tax credit.

derived.” (R&TC, § 17072; IRC, § 62.) Because R&TC section 17072 conforms to IRC section 62, taxpayers must report the same federal AGI on both their federal and California returns.

FTB relied upon information provided by the IRS to adjust appellant’s 2013 California AGI to the same amount as reported to and accepted by the IRS as appellant’s 2013 federal AGI. Because of the increase in California income, FTB determined that appellant did not qualify for the renter’s credit. Based on those adjustments, FTB reasonably determined an additional tax due of \$1,544, an amount which appellant has not disputed.

FTB’s determinations are presumed correct, and appellant bears the burden of proving error. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy an appellant’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) A taxpayer’s failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

In his protest, appellant asserted that he had not received the authorized refund of \$1,475, that the state had kept that amount, and that his acknowledged balance due should be credited accordingly. In this appeal, the only grounds asserted are that appellant has not received the refund and requests a delay and further information to assist him in identifying where the refund payment was sent.²

Appellant has failed meet his burden to show error in the FTB’s proposed assessment. Information the IRS provided to FTB shows that appellant reported a federal AGI of \$46,954 on his 2013 federal return, compared to the federal AGI of \$4,390 that appellant reported on his 2013 California return, for a difference of \$42,594. Based on the Form W-2 appellant provided, it appears that he used the amount reported for his federal tax withholdings (i.e., \$4,390.96) as his federal AGI. Appellant acknowledges that his reporting of federal AGI of \$4,390 on his California return was an error, and he has not provided any evidence showing respondent’s determinations are incorrect. Further, appellant has not shown by adequate documentation³ that the refund warrant was not received or debited to his bank account by direct deposit. We would

² We consider the grounds of the appeal to include a claim of a credit for the refund amount not received. However, our role in this appeal is merely to determine validity of the proposed assessment. Accordingly, delay of this appeal requested by appellant for the reason stated is not warranted.

³ Unsupported assertions are not sufficient to satisfy an appellant’s burden of proof. (*Appeal of Magidow, supra.*)

anticipate, however, that FTB would continue to assist appellant in his efforts to determine whether in fact his refund of \$1,475 was received, and if not to further assist his efforts to obtain the funds.

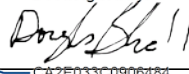
Therefore, respondent’s determination must be upheld.

HOLDING

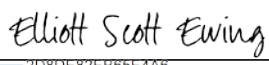
Appellant has failed to show error in respondent’s proposed assessment of additional tax for tax year 2013.

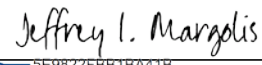
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

CA2E033C0906484
Douglas Bramhall
Administrative Law Judge

We concur:

DocuSigned by:

2D8DE82EB65E4A6
Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:

5E9822EBB1BA41B
Jeffrey I. Margolis
Administrative Law Judge

Date Issued: 2/25/2020