

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

In the Matter of the Appeal of: ) OTA Case No. 18053187  
**DERRICK S. LEE** )  
 ) Date Issued: December 18, 2019  
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**OPINION**

Representing the Parties:

For Appellants: Derrick S. Lee

For Respondent: David Muradyan, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045(a), Derrick S. Lee (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing additional tax of \$18,596 and an accuracy-related penalty of \$3,719.20,<sup>1</sup> plus interest, for the 2013 tax year. Appellant waived his right to an oral hearing. Therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellant has shown error in FTB’s proposed assessment, which is based on information received from the Internal Revenue Service (IRS).

**FACTUAL FINDINGS**

1. The IRS audited appellant’s 2013 federal tax return, increasing his taxable income and assessing additional tax and an accuracy-related penalty. Appellant did not report these adjustments to FTB.

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<sup>1</sup> Appellant does not specifically contest the accuracy-related penalty and therefore we will not address it.

2. Based on the IRS information, FTB made corresponding adjustments and issued a Notice of Proposed Assessment, in the amounts noted above.<sup>2</sup>
3. Appellant protested the NPA, but FTB ultimately affirmed it by issuing a Notice of Action. This timely appeal followed.

### DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal change to a taxpayer's income or to state where the change is erroneous. It is well-settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant first contends he owes no additional tax. As proof, he submits what appears to be amended 2013 federal and California tax returns, with the latter showing zero tax due. Appellant also alleges he is appealing the IRS assessment and provides a notice issued by the IRS, dated July 30, 2019, granting him a collection due process hearing for the 2012 and 2013 tax years. This evidence, however, is unpersuasive. Appellant's amended 2013 federal tax return, dated October 4, 2016, conflicts with the information in his 2013 federal account transcript, dated July 3, 2018, which does not indicate an amended federal return was filed with the IRS or that the IRS subsequently modified its assessment. Appellant also did not submit any evidence to support the revised amounts stated in the amended returns for which we could make an independent determination as to their accuracy. Further, the IRS collection due process notice supports that the 2013 federal assessment is final. A collection due process hearing occurs after a final liability has been established and gives a taxpayer the right to challenge the proposed collection action, not the existing liability. Accordingly, appellant has not shown error in FTB's proposed assessment.

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<sup>2</sup> In the NPA, FTB largely followed the IRS adjustments by increasing appellant's taxable income by \$210,488 related to his sole proprietorship business, as follows: \$16,334 of disallowed expenses for returns and allowances; \$61,779 of disallowed other expenses; \$140,806 of a disallowed cost of goods sold deduction; and \$8,431 of an allowed deduction for the self-employment tax deduction.

HOLDING

Appellant has not shown error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*Linda C. Cheng*  
8B585BFAC08940D...  
Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge