

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18073446
A. JONES AND)
S. JONES)
_____)

OPINION

Representing the Parties:

For Appellants: A. Jones
For Respondent: Sarah Fassett, Tax Counsel;
Nancy Parker, Tax Counsel IV
For Office of Tax Appeals: James Scott Whitehouse, Analyst

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045,¹ A. Jones and S. Jones (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$4,670 of additional tax and applicable interest for the 2014 taxable year.

This appeal was scheduled for a February 25, 2020, oral hearing in Sacramento, California. However, appellants waived their appearance, so this matter is decided based on the written record.

ISSUE

Whether appellants have demonstrated error in the proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. The Internal Revenue Service (IRS) examined appellants’ 2014 federal income tax return and made adjustments increasing their taxable income by unreported pension

¹ All section references are to laws operative for the 2014 taxable year.

- distributions of \$62,394 and disallowing itemized deductions by \$1,248.² Appellants agreed with the federal assessment.³
2. FTB received information in the form of a CP2000 audit report from the IRS regarding this federal determination and made corresponding adjustments to appellants' 2014 California personal income tax return, issuing a Notice of Proposed Assessment (NPA) to appellants.
 3. Appellants' federal Account Transcript shows that their federal tax liability went final and was fully paid, and the IRS did not cancel or reduce the assessment.
 4. Appellants' federal Wage and Income Transcript shows that AON Hewitt BPS LLC (AON), an entity in Illinois, issued a Form 1099-R to appellant-husband reporting taxable distributions to appellant-husband totaling \$62,394.
 5. According to information from the Employment Development Department (EDD), Alight Solutions Benefit Payment Services LLC (Alight), an entity in Illinois,⁴ reported payments to appellant-husband totaling \$62,394.56 (i.e., \$20,594.56 + \$41,800) and withholding of \$1,247.89 (i.e., \$411.89 + \$836).
 6. The NPA imposed additional tax of \$4,670, plus applicable interest, and gave appellants credit for the \$1,248 (rounded) of tax withheld.
 7. Appellant-husband is a retired California state worker. Appellant-husband neither worked nor lived in Illinois during 2014.
 8. FTB subsequently issued a Notice of Action affirming the NPA.

DISCUSSION

A taxpayer shall report the changes or corrections and either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) 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.)

² Although the additional tax is partially attributable to disallowed itemized deductions, appellants have not appealed that portion of the proposed assessment, and we therefore discuss it no further.

³ Appellants fully agreed as noted on the 2014 CP2000 Data Sheet, which is used to report federal adjustments.

⁴ It appears that AON and Alight are related entities, both with Lincolnshire, Illinois addresses.

Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

A tax is imposed “upon the entire taxable income of every resident of this state.” (R&TC, § 17041.) R&TC section 17071 incorporates into California law Internal Revenue Code (IRC) section 61, which defines “gross income” as “all income from whatever source derived,” including annuity and pension income. (IRC, § 61(a).) As California conforms to IRC section 61, California residents who receive distributions from a retirement plan must include these amounts in taxable income for California tax purposes.

Appellants contend that they never received the income reported by AON in the amount of \$62,394, and that they never received income from any company in Illinois and that appellant-husband never worked or lived in Illinois. Appellants assert that they are still contesting the federal assessment and might be victims of identity theft. However, appellant's federal account transcript shows that the federal imposition of additional tax based on the unreported income was not revised by the IRS, and there is no evidence of a pending appeal or reconsideration of the federal determination.

Further, appellants' contention that they did not receive the additional retirement income is contradicted by the information reported by EDD, which shows that appellant-husband received distributions from Alight Solutions Benefit Payment Services LLC of \$41,800 in the first quarter of 2014 and \$20,594.56 in the second quarter of 2014. The sum of these distributions is equal to the amount of unreported income at issue of \$62,394 (rounded), and is also equal to the amount reported by AON on appellant-husband's Form 1099-R. Moreover, appellants reported income from AON on their 2013 tax return, which, in addition to the EDD records and federal information, makes unpersuasive appellants' argument that they never received income from AON or any Illinois company.⁵ Appellants have not presented any evidence establishing error in FTB's determinations or the federal assessments on which they are based. Therefore, we conclude that appellants have not shown error in FTB's determinations, and FTB's proposed assessment correctly increased appellants' taxable income by \$62,394.


⁵ Appellants claim that they never earned or received income from a company named AON. However, a review of appellants' 2013 tax return verifies that they reported total pension income of \$23,913 and that \$17,613 was received from AONH in Lincolnshire, Illinois; appellants reported the \$17,613 as an early distribution and paid both the state (2.5%) and federal (10%) additional tax thereon. Further, appellants' claimed total withholding credit of \$6,259 included \$326 of withholding reported on the Form 1099-R from AONH.

HOLDING

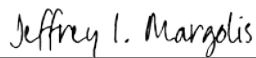
Appellants have not shown error in FTB’s R&TC section 18622 determination or the federal adjustments upon which it is based.


DISPOSITION

FTB’s action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

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Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

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