

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

**AHMAD SOLTANI AND EUGENIA
MARCIA SOLTANI**

) OTA Case No. 19034499
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)
)**OPINION**

Representing the Parties:

For Appellants: Ahmad Soltani and Eugenia Marcia Soltani

For Respondent: Desiree Macedo, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Ahmad Soltani and Eugenia Marcia Soltani (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing an additional tax of \$1,470, plus interest, for the 2014 tax year.

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

ISSUE

Whether appellants have shown error in FTB's proposed assessment of additional tax, which is based on federal adjustments made by the Internal Revenue Service (IRS).

FACTUAL FINDINGS

1. On August 25, 2015, appellants filed a joint 2014 income tax return (FTB Form 540). Appellants reported federal adjusted gross income of \$113,000 and tax of \$2,150. After subtracting exemption credits and a withholding credit, appellants reported an overpayment of \$2,996.
2. Subsequently, FTB received information from the IRS in the form of a CP2000 Data Sheet, indicating that the IRS adjusted appellants' 2014 federal return by including

- unreported interest of \$8,¹ taxable dividends of \$20,976, and qualifying dividends of \$3,862. The CP2000 Data Sheet indicates that appellants fully agreed with the federal adjustments.
3. FTB issued a Notice of Proposed Assessment (NPA) on May 23, 2018. The NPA increased appellants' reported California taxable income by \$20,984, from \$69,976 to \$90,960, which consisted of interest of \$8 and taxable dividends of \$20,976. The NPA proposed additional tax of \$1,470, plus interest, and indicated that the proposed assessment was based on the federal audit report.
 4. On July 27, 2018, FTB received appellant-husband's protest letter. He stated that he was recovering from a heart attack when the IRS made its 2014 assessment and he had not considered his investment losses as a day trader when he agreed to the federal assessment.
 5. In a letter dated January 2, 2019, FTB acknowledged receiving the protest letter. FTB asserted that the information that it recently received from the IRS did not show that the federal assessment was canceled or reduced, and California and federal law are the same for the issues involved. FTB informed appellants that if the IRS cancels or reduces its assessment, they should send FTB copies of the revised IRS report. FTB requested a response from appellants within 30 days.
 6. After receiving no response from appellants, FTB issued a Notice of Action on February 12, 2019, affirming the NPA.
 7. This timely appeal followed. Appellants provided a revised California return with their appeal. The revised California return reports on line 9(a), column A of Schedule CA ordinary dividends of \$20,834, while the original Schedule CA reports zero ordinary dividends.²

¹ Appellants do not address the additional interest income of \$8; therefore, we will also not address it in this opinion.

² The NPA lists taxable dividends of \$20,976, which is \$142 more than the \$20,834 amount listed on line 9(a), column A of appellants' revised Schedule CA. It is unclear whether this means that appellants concede all but \$142 of the taxable dividends portion of the NPA. However, because we find that appellants have not met their burden of proof in this case, the exact amount at issue is not relevant.

DISCUSSION

R&TC section 18622, subdivision (a), provides that taxpayers 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 audit report is presumptively correct and that taxpayers bear 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.)

R&TC section 17041, subdivision (a), provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every California resident. R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as including “all income from whatever source derived.”

Neither the IRC nor the R&TC defines the term “trade or business.” Whether appellant-husband’s securities activities constituted a trade or business is a question of fact, taking into consideration the nature of the income to be derived from the activity, and the frequency, extent, and regularity of the taxpayer’s transactions. (*Moller v. U.S.* (Fed. Cir. 1983) 721 F.2d 810, 813.) For a taxpayer to be held a trader in securities, the taxpayer must demonstrate that he or she was engaged in market transactions almost daily for a substantial and continuous period, generally longer than one year; and, those activities constituted the taxpayer’s sole or primary income-producing activity. (*Chen v. Commissioner*, T.C. Memo. 2004-132.) Any net loss from the business would be an ordinary loss, deductible in full as ordinary loss under IRC section 165(c)(1).³ On the other hand, where the taxpayer’s daily trading activities covered only a portion of a single taxable year, and securities trading was either not the sole or primary activity in which the taxpayer engaged in to produce income, trader status has been denied and the taxpayer is considered to be an investor. (*Chen v. Commissioner*, *supra*.) In such instances, losses from purchases and sales of securities would be a capital loss deductible only to the extent of \$3,000. (Int.Rev. Code, §§ 165(f), 1211(b)(1).⁴)

Here, appellants argue that when the IRS contacted them about their return, appellant-husband was suffering from an illness and agreed to the IRS’s changes that did not factor in his investment losses as a day trader. However, appellants have not provided any evidence of

³ R&TC section 17201, subdivision (a), incorporates by reference IRC section 165, except as otherwise provided.

⁴ R&TC section 18151 incorporates by reference IRC section 1211, except as otherwise provided.


appellant-husband's activities for us to determine whether he indeed was involved in the trade or business of a day trader. Without providing documentation to substantiate the trading activities and losses, appellants failed to meet their burden that the federal determination was erroneous. Accordingly, FTB's proposed assessment is sustained.

HOLDING

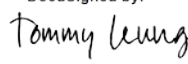
Appellants have not shown error in FTB's proposed assessment of additional tax.

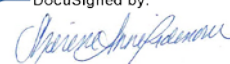
DISPOSITION

FTB's action is sustained in full.

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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

67F043D83FE547C
Sheriène Anne Ridenour
Administrative Law Judge

Date Issued: 2/4/2020