

In the Matter of the Appeal of: ) OTA Case No. 19044651  
)  
**K. JUN AND** )  
**A. JUN** )  
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<sup>1</sup> Appellants filed their initial appeal letter. Subsequently, the Tax Appeals Assistance Program provided appellants with representation: law student Scott Dutra filed appellants' reply brief; and law student Marika Sinnis filed appellants' prehearing conference statement and represented appellants at the prehearing conference.

3. On November 15, 2018, respondent issued a Notice of Proposed Assessment (NPA) that revised appellants' federal itemized deductions from the \$105,867 reported on their California return to \$95,324. This increases appellants' California taxable income by \$10,543 and resulted in a proposed additional tax of \$980 plus interest.
4. Appellants protested the NPA, respondent affirmed the NPA in a Notice of Action, and appellants timely appealed.

### DISCUSSION

#### Issue 1 – Is the proposed assessment barred by the statute of limitations?

Appellants argue that the proposed assessment is barred by the statute of limitations. We disagree. Generally, respondent must issue a proposed assessment within four years of the original due date or the date the taxpayer filed his or her California return, whichever is later. (R&TC, §§ 19057, 19066.) For tax year 2014, under the general four-year statute of limitations, respondent had until April 15, 2019, to issue a proposed assessment. Thus, under R&TC section 19057, the NPA issued on November 15, 2018, was timely.

#### Issue 2 – Did appellants establish error in respondent's proposed assessment of additional tax for tax year 2014?

The Supreme Court of California has stated: "As we have observed, California income tax law generally is based upon federal income tax law." (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 904, citing 9 Witkin, Summary of Cal. Law (9th ed.1989) Taxation, § 287, p. 344.) "State law provides that subject to exceptions, gross income, adjusted gross income, and taxable income for state tax purposes are defined as their equivalents for federal tax purposes." (*Ibid.*, citing R&TC, §§ 17071, 17072, & 17073(a).) Under R&TC section 17072(a), California generally incorporates by reference IRC section 62, which defines AGI. Thus, absent California-specific modifications, taxpayers generally must report the same AGI on California returns as reported on federal returns.

Furthermore, deductions are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to any deduction claimed. (*INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84; *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Based on the preponderance of the evidence standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (Evid. Code,

§ 115; *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Taxpayers must identify an applicable statute allowing a deduction and provide credible evidence that their facts are within the terms of the legal authorities. (*Appeal of Telles* (86-SBE-061) 1986 WL 22792.)

Respondent received information from the IRS that appellants' itemized deductions—before federal limitations—totaled \$95,324, not the \$105,867 that appellants reported on their 2014 California Resident Income Tax Return. Appellants argue that “the IRS has not notified them that any deductions have been disallowed . . . .” Notwithstanding their argument, appellants did not submit any evidence that shows or tends to show error in respondent's proposed assessment of additional tax; therefore, appellants did not prove that respondent's proposed assessment is erroneous.

### HOLDINGS

1. The NPA was timely under R&TC section 19057. Thus, the proposed assessment is not barred by the statute of limitations.
2. Appellants did not establish error in respondent's proposed assessment of additional tax for tax year 2014.

### DISPOSITION

We sustain respondent's action in full.

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Alberto T. Rosas

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Alberto T. Rosas  
Administrative Law Judge

We concur:

DocuSigned by:

Richard Tay

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Richard Tay  
Administrative Law Judge

DocuSigned by:

Nguyen Dang

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Nguyen Dang  
Administrative Law Judge

Date Issued: 5/14/2020