

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
C. HIRIGOYEN

) OTA Case No. 19044667
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OPINION

Representing the Parties:

For Appellant: C. Hirigoyen

For Respondent: Angelina Yermolich, Legal Assistant

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Hirigoyen (appellant)¹ appeals an action by respondent Franchise Tax Board (FTB) proposing \$1,603 of additional tax and applicable interest for the 2014 taxable year.

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

ISSUE

Whether appellant has established error in FTB’s proposed assessment of additional tax for the 2014 taxable year, which was based on a federal determination.

FACTUAL FINDINGS

1. Appellant and her spouse filed a timely 2014 California income tax return.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) showing that appellant and her spouse’s federal return had been adjusted for unreported pension income of \$16,999 from State Street Retiree Service for Peace Officers Firefighters Supplement. The increase in taxable income also resulted in an adjustment

¹ Appellant filed a joint return with her spouse, but she filed this appeal in her name only.

- of \$340 to the claimed miscellaneous deduction based on a two percent adjusted gross income limitation.²
3. Based on the information from the IRS, FTB issued a Notice of Proposed Assessment (NPA) that increased appellant's taxable income by \$17,339 (\$16,999 + \$340) and proposed additional tax of \$1,603 plus applicable interest.
 4. Appellant protested the NPA and stated that she was waiting for the IRS to complete a review of documents that appellant provided to the IRS.
 5. FTB provided appellant an opportunity to provide additional documentation to demonstrate that the IRS modified its determination. However, appellant did not provide the requested documentation, and FTB obtained a copy of appellant's federal Account Transcript, which showed that the IRS determination was final. As a result, FTB issued a Notice of Action that affirmed the NPA.
 6. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or to state where the changes are 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. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including pensions. (See IRC, § 61(a).)

Here, FTB received information from the IRS that appellant's federal return was adjusted to include unreported pension income, which also caused an adjustment to appellant's claimed miscellaneous deduction. On appeal, appellant's sole argument is that she is still waiting to receive her federal account transcript and would like to forward documents to establish that FTB's proposed assessment is overstated or erroneous. However, FTB provided appellant's federal account transcript in this appeal, which indicates that the IRS determination is final. In addition, appellant has not provided the additional documentation to establish that FTB's

² The IRS also imposed an accuracy-related penalty, but FTB did not include an accuracy-related penalty in its proposed assessment.

proposed assessment is overstated or erroneous. Therefore, we find that appellant has not met her burden of proof.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment of additional tax for the 2014 taxable year, which was based on a federal determination.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Linda C. Cheng
8B585BEAC08946D...
Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 3/5/2020