

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

In the Matter of the Appeal of:

**C. ALEXANDER**) OTA Case No. 19075031  
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)**OPINION**

Representing the Parties:

For Appellant:

C. Alexander

For Respondent:

Rachel Abston, Senior Legal Analyst

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Alexander (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,226 for the 2015 tax year.

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

**ISSUE**

Whether FTB erred in determining a deficiency in tax against appellant based upon a federal audit adjustment.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2015 California Resident Income Tax Return, Form 540. That return was based upon tax information appellant had reported on his federal income tax return for 2015.
2. The Internal Revenue Service (IRS) audited appellant's federal income tax return and determined that appellant had underreported his 2015 income by omitting wage income of \$22,358 from the Dalhart Independent School District and nonemployee compensation of \$3,874 from EF Language Schools. Appellant had reported on his originally filed federal return only his \$19,622 of California-source income from the Madera Unified

School District (\$19,622) and \$750 of income reported on a Form 1099-MISC. The IRS also allowed appellant a self-employment tax deduction of \$327. The IRS determination resulted in a final federal assessment of a deficiency against appellant.

3. FTB became aware of the final federal change to appellant's 2015 income and made corresponding adjustments to appellant's California taxable income. FTB issued a Notice of Proposed Assessment (NPA) proposing to assess a tax deficiency of \$1,226 for 2015.
4. Appellant protested the NPA and included with his protest letter an amended California return for 2015, claiming he was a part-year resident of California during 2015, having moved to California from Texas in August 2015, and that the unreported income that was the basis for the IRS deficiency determination was earned from sources outside of California, while appellant was a Texas resident. Nevertheless, because the increase in appellant's total income affects the computation of appellant's California tax liability, appellant's amended return reported an additional California tax liability of \$526, of which he had previously paid \$123, leaving a tax deficiency of \$403.
5. FTB appears to have ignored the allegations contained in appellant's protest letter as to appellant's part-year residence in California during 2015 and issued a Notice of Action (NOA) reaffirming the deficiency proposed in its NPA of \$1,226, plus interest.
6. Appellant timely appealed from the NOA.
7. In its opening brief in this appeal, FTB acknowledged that appellant was a Texas resident before moving to California in August 2015, and that the additional income determined by the IRS was not California-source income. FTB recomputed appellant's tax liability for 2015 and attached a pro forma draft return for appellant that showed how it had recomputed appellant's 2015 tax liability and arrived at a \$455 deficiency in tax being due from appellant, rather than the \$403 determined by appellant in his amended return.
8. Appellant was given the opportunity to respond to FTB's opening brief but failed to do so.

### 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; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Appellant does not contest the federal adjustment; rather, he contends that the NOA erred by failing to take into account the fact that he was only a California resident for part of 2015 and that the additional income determined by the IRS was not California-source income. He admits, however, that the federal adjustments affect the computation of his California tax liability for 2015. Appellant claims that the adjustments generate a tax deficiency of \$403, instead of the \$1,226 determined in the NOA. FTB now agrees with appellant's residency and income-sourcing contentions, but its computation of appellant's revised 2015 tax liability arrives at a slightly higher deficiency amount of \$455. Our analysis of the parties' respective computations indicates that the \$52 discrepancy is largely (if not entirely) attributable to appellant's computation of his revised federal adjusted gross income as \$41,897, whereas FTB determined that appellant's revised federal adjusted gross income was \$45,443. We find that FTB's number is correct; it comports with federal tax information provided to FTB and attached to FTB's opening brief. Accordingly, we hold that the tax deficiency determined in the NOA of \$1,226 should be reduced to \$455.

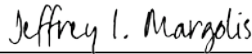
HOLDING

Appellant has shown that the deficiency in tax determined with respect to his 2015 tax year should be reduced to \$455.

DISPOSITION

FTB's determination of a \$1,226 deficiency in appellant's 2015 tax liability is reduced to \$455 (plus interest thereon as provided by law).

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Jeffrey I. Margolis

Administrative Law Judge

We concur:

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Teresa A. Stanley

Administrative Law Judge

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Joshua Lambert

Administrative Law Judge

Date Issued: 2/26/2020