

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

In the Matter of the Appeal of: ) OTA Case No. 19105392  
**P. PEREZ** )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: Leticia Banderas, Representative

For Respondent: Jean M. Cramer, Tax Counsel IV

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Perez (appellant)<sup>1</sup> appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,580.19<sup>2</sup> for the 2015 taxable year.<sup>3</sup>

Appellant waived his 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 2015 taxable year, which was based on a federal determination.

**FACTUAL FINDINGS**

1. Appellant and his spouse filed a timely California Resident Income Tax Return for the 2015 taxable year.

---

<sup>1</sup> Appellant filed a joint return with his spouse, but he filed this appeal in his name only.

<sup>2</sup> This amount consists of additional tax of \$4,118, plus accrued interest of \$462.19.

<sup>3</sup> Appellant also filed an appeal for the 2014 taxable year; however, in an email between FTB and the Office of Tax Appeals (OTA) dated October 29, 2019, FTB stated that it allowed the claim for refund for this year. Thus, it is our understanding that there are no disputed issues as to the 2014 taxable year. Furthermore, OTA informed appellant that we would not be accepting his appeal for the 2014 taxable year by letter dated November 8, 2019, and appellant has not indicated that he wished to continue pursuing his claim for refund for the 2014 taxable year. Therefore, this appeal only involves the 2015 taxable year.

2. Subsequently, FTB received information from the Internal Revenue Service (IRS) that appellant and his spouse's federal return had been adjusted. Specifically, the IRS increased appellant's joint taxable income by \$44,283 based on various adjustments related to Schedule E, which is used to report, as relevant here, income and expenses from rental real estate and partnerships.
3. Based on the information from the IRS, FTB issued a Notice of Proposed Assessment (NPA) that increased appellant's California taxable income by the \$44,283, as determined by the IRS. Based on this adjustment, FTB proposed additional tax of \$4,118, plus accrued interest.
4. Appellant protested the NPA, arguing that FTB's determination was not consistent with the IRS's changes.
5. Appellant paid the tax and interest. As a result, FTB treated appellant's protest as a claim for refund.<sup>4</sup>
6. FTB denied the claim for refund, and this timely appeal followed.
7. Subsequently, FTB obtained appellant's federal account transcript on December 3, 2019.

#### 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. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Here, FTB received information from the IRS that appellant's 2015 federal taxable income was adjusted upward by \$44,283, which shows that appellant had more taxable income than previously reported. Based on this information, FTB made conforming adjustments by increasing his California taxable income by the \$44,283. Therefore, it is appellant's burden to demonstrate that FTB's determination is erroneous.

On appeal, appellant argues that FTB did not adjust appellant's California return in accordance with the IRS's determination. In support of this argument, appellant provided an Income Tax Examination Changes form from the IRS. However, according to this document,

---

<sup>4</sup> Pursuant to R&TC section 19335, if a taxpayer pays the protested tax before FTB acts upon the protest, FTB shall treat the protest as a claim for refund.

the IRS increased appellant’s taxable income by the \$44,283 in dispute here, which is the amount that FTB used in recalculating appellant’s California taxable income. As a result, this documentation supports FTB’s position and is contrary to appellant’s assertion. Furthermore, according to appellant’s federal account transcript that FTB received on December 3, 2019, there have not been any further adjustments to appellant’s revised federal taxable income amount. Therefore, appellant has not met his burden of proof.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment of additional tax for the 2015 taxable year, which was based on a federal determination.

DISPOSITION

FTB’s denial of appellant’s 2015 taxable year claim for refund is sustained.

DocuSigned by:  
*Daniel Cho*  
7B28A07A7E0A43D...  
Daniel K. Cho  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
FD75A3136CB34C2...  
Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Amanda Vassigh*  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge

Date Issued: 6/16/2020