

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
DEBBIE KLEE

) OTA Case No. 18093691
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OPINION

Representing the Parties:

For Appellant: Ruben Alvarez, Tax Appeals Assistance Program

For Respondent: Donna L. Webb, Staff Operations Specialist

E. S. EWING, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Debbie Klee (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing additional tax of \$2,388, plus interest, for the 2014 tax year.

Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessment, which is based on a federal audit determination.

FACTUAL FINDINGS

1. On April 13, 2015, appellant timely filed a California Resident Income Tax Return for the 2014 tax year and reported California taxable income of \$167,664.
2. The Internal Revenue Service (IRS) audited appellant’s 2014 federal income tax return and adjusted appellant’s income and deductions, which resulted in a tax deficiency. Specifically, the IRS increased appellant’s taxable income by taking into account unreported interest income, taxable dividends, capital gains, and unemployment compensation. The IRS adjustments then went final.
3. Following the IRS action, FTB issued to appellant a Notice of Proposed Assessment

- (NPA) on August 17, 2017, and proposed to make conforming state adjustments as a result of the final federal assessment. The NPA reflected revised taxable income of \$193,348, resulting in proposed additional tax of \$2,388, plus applicable interest.
4. Appellant timely filed a protest of the NPA. During the protest, FTB sent a letter requesting that appellant provide a revised IRS report and any additional information appellant wished to be considered in the protest. Appellant did not respond to the letter and therefore FTB closed the protest and affirmed its NPA in full.
 5. Appellant then timely filed this appeal.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) A proposed deficiency assessment (whether it be of tax or penalties) that is based on a federal audit is presumptively correct and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Generally, the applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) When a proposed FTB assessment is based on a final federal adjustment, taxpayers can satisfy their burden of proof in one of two ways. They can either show that the IRS has changed or eliminated its adjustments, or they can produce evidence that the adjustments are incorrect or inapplicable. (R&TC, § 18622(a).)

As mentioned above, the IRS audited appellant's 2014 federal income tax return and adjusted appellant's income and deductions, which resulted in a tax deficiency. Specifically, the IRS increased appellant's taxable income by taking into account unreported interest income, taxable dividends, capital gains, and unemployment compensation. As a result of the IRS adjustments, FTB increased appellant's California taxable income from \$167,664 to \$193,348.

Appellant contends that appellant has paid all tax due, and FTB's actions are untimely. However, these contentions do not address the correctness of the IRS audit or FTB's corresponding proposed assessment based on the federal action. In particular, appellant provides no documentation or other evidence that the IRS's adjustments related to unreported interest income, taxable dividends, capital gains, and unemployment compensation are incorrect. Thus, appellant has not met the burden of proving that FTB's adjustments premised on the federal adjustments were incorrect or that the IRS has changed its income determination. If the IRS

eventually does reconsider and change its audit determination for the year at issue, the law permits appellant to notify FTB at the time of the federal changes and request that FTB make corresponding state changes. (See R&TC, §§ 18622, 19311.)

Finally, appellant argues FTB's actions are untimely and questions why it took so long to propose an assessment of additional tax. The general statute of limitations for FTB's proposed assessments is four years from the date the return is filed, as long as the return is filed on or before the extended due date. (See R&TC, § 19057(a).) If the return is filed before the original due date of April 15 of the year following the tax year, then the return is considered filed on the actual due date, April 15. (See R&TC, § 19066(a).) In this case, the return was timely filed on April 13, 2015. This means that FTB had four years from the due date – i.e., April 15, 2019 – to issue its NPA. The NPA was issued on August 17, 2017, well before the statute of limitations expired. Thus, FTB's assessment was not barred by the statute of limitations.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment, which is based on a federal audit determination.

DISPOSITION

We sustain FTB’s action in full.

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
John O Johnson
873DB797B9E64E1
John O. Johnson
Administrative Law Judge

Date Issued: 1/22/2020