

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. ALVARADO AND
T. MENDOZA

) OTA Case No. 18073493
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)**OPINION**

Representing the Parties:

For Appellants:

J. Alvarado
T. Mendoza

For Respondent:

Bradley J. Coutinho, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Alvarado and T. Mendoza (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$1,956 of additional tax, and applicable interest, for the 2013 tax year.

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

ISSUE

Whether appellants established error in FTB's proposed assessment for taxable year 2013, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2013 California Resident Income Tax Return (Form 540). On the Form 540, appellants claimed exemption credits for six dependents totaling \$1,956, including the following: two daughters; one son; one stepdaughter; one niece; and one nephew.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) in the form of a FEDSTAR IRS Data Sheet, indicating that the IRS disallowed appellants' six

- claimed dependent exemption credits. The IRS also disallowed a claimed federal child tax credit.
3. On December 30, 2016, FTB issued a Notice of Proposed Assessment (NPA) that conformed to the federal adjustments by disallowing claimed dependent exemption credits totaling \$1,956.
 4. In response, appellants filed a timely protest, asserting that the federal adjustments were not final and requesting more time from FTB.
 5. FTB responded to appellants' protest, stating that information received from the IRS did not indicate that the IRS reduced or cancelled the federal adjustments. FTB requested that appellants provide additional information.
 6. After receiving no response from appellants, FTB issued a Notice of Action (NOA) for the 2013 tax year, affirming the NPA. This timely appeal followed.
 7. On July 23, 2019, the IRS denied appellants' request for reconsideration of the federal adjustment because appellants did not provide sufficient information to show entitlement to the six claimed dependent exemption credits.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer must report IRS adjustments to FTB and either concede the accuracy of a federal determination or state how it is incorrect. It is well-settled law that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 409; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

A taxpayer may claim an exemption credit for each "dependent," as allowed by Internal Revenue Code (IRC) section 151(c). (R&TC, § 17054(d)(1).) A "dependent" means a *qualifying child* or a *qualifying relative*. A qualifying child is an individual that is: (1) a son, daughter, stepson, stepdaughter, or eligible foster child of the taxpayer; (2) who has not yet attained the age of 19, or is a student who has not yet attained the age of 24, as of the calendar year; (3) who received more than one-half of their support during the tax year at issue from the taxpayer; and (4) who has not filed a joint income tax return in the calendar year in which the taxpayer's taxable year begins. (IRC, §152(c)(1)(A)-(E); IRC, § 152(f).)

A qualifying relative is an individual: (1) who bears a relationship to the taxpayer, such as the taxpayer's parent; (2) whose gross income for the tax year at issue is less than the IRC

section 151(d) exemption amount; (3) who received more than one-half of their support during the tax year at issue from the taxpayer; and (4) who is not a qualifying child of the taxpayer or any other taxpayer for the tax year at issue. (IRC, § 152(d)(1)(A)-(D).)

FTB's proposed assessments were based on federal adjustments pursuant to a federal audit. In response to the NOA issued by FTB, appellants assert that they are entitled to dependent exemptions for J. Alvarado's daughters. Appellants assert that Mr. Alvarado shares custody of his daughters with his former spouse. Appellants argue that Mr. Alvarado's daughters spend more time with appellants than they do with Mr. Alvarado's former spouse and they are therefore entitled to claim dependent exemptions for Mr. Alvarado's daughters. However, appellants did not provide any evidence that Mr. Alvarado's daughters are qualifying children. Specifically, appellants did not provide any evidence that they provided more than one-half of the support for Mr. Alvarado's daughters. As such, we have no basis to find that appellants are entitled to claim dependent exemptions for Mr. Alvarado's daughters.

Similarly, appellants assert that they are entitled to dependent exemptions for Mr. Alvarado's niece and nephew, because appellants provide financial support. However, appellants did not provide any evidence that Mr. Alvarado's niece or nephew are qualifying relatives. Accordingly, we have no basis to find that appellants are entitled to claim dependent exemptions for Mr. Alvarado's niece and nephew.


Finally, appellants have not provided any evidence that the IRS changed or reduced its determination. Indeed, on July 23, 2019, the IRS rejected appellants' request for reconsideration of the federal adjustment. As such, appellants have not shown error in FTB's proposed assessment.

HOLDING


Appellants did not show error in FTB’s proposed assessment of additional tax based on a federal determination.


DISPOSITION

FTB’s action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Lambert
Administrative Law Judge

DocuSigned by:

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Richard I. Tay
Administrative Law Judge

Date Issued: 2/24/2020