

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

In the Matter of the Appeal of: ) OTA Case No. 20036056  
L. BAYOT AND )  
M. BAYOT )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Allan Divinagracia, E.A., C.V.A.

For Respondent: Rachel Abston, Senior Legal Analyst

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Bayot and M. Bayot (appellants) appeal an action by respondent Franchise Tax Board proposing \$1,376 in additional tax and applicable interest for the 2015 tax year.

We decide this matter based on the written record because appellants waived their right to an oral hearing.

**ISSUE**

Have appellants shown that the proposed assessment of additional tax for the 2015 tax year, which is based on federal adjustments, is wrong?

**FACTUAL FINDINGS**

1. Appellant M. Bayot owned shares in a publicly traded corporation, which was involved in a merger transaction during 2015. According to correspondence from Wells Fargo Shareowner Services, the transaction resulted in a cash payout, which was reported to the Internal Revenue Service (IRS) as dividends (payout dividends). The company issued a Form 1099-DIV (the 1099-DIV), which identified the payout dividends as both ordinary dividends and qualified dividends.

2. Appellants filed their 2015 federal income tax return (Form 1040), which did not include the payout dividends in appellants' reported income or adjusted gross income.
3. Appellants filed their 2015 joint California Resident Income Tax Return (Form 540), which also did not report the payout dividend, reporting an overpayment of \$109. Respondent refunded that amount.
4. On September 25, 2017, the IRS issued to appellants a CP2000 Notice (CP2000) informing appellants that the income and payment information the IRS had on file did not match amounts appellants reported on their 2015 federal income tax return. As relevant here, this CP2000 showed that appellants underreported taxable dividends by failing to report the payout dividends. It also informed appellants what amount should have been reported as taxable income (on line 43) and as total tax (on line 63) of their federal return.
5. On June 11, 2018, the IRS issued to appellants a second CP2000, which showed the same underreported taxable dividends and reportable taxable income, but a substantially reduced total tax. This CP2000 also informed appellants that the IRS calculated the revised tax amount using the Schedule D tax computation.
6. Respondent learned that the IRS adjusted appellants' 2015 income for the unreported payout dividends. Based on this new information, respondent issued to appellants a Notice of Proposed Assessment (NPA) for additional tax of \$1,376.
7. Appellants protested the NPA.
8. Respondent wrote to appellants, explaining the bases for the proposed assessment and inviting appellants to provide evidence that the IRS had changed or cancelled its determination regarding the unreported payout dividends.
9. When appellants did not provide the requested evidence, respondent issued a Notice of Action affirming the NPA. This timely appeal followed.

#### DISCUSSION

R&TC section 18622 states a taxpayer shall either concede the accuracy of a federal determination or state how it is wrong. We presume a deficiency determination based on a federal assessment is correct, and a taxpayer bears the burden of proving otherwise. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not enough to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Ibid.*)

Appellants argue that the federal increase was resolved “through substantiation and mitigation,” and that their federal payment of \$1,577, instead of the much greater originally proposed amount, is evidence of the change to the federal determination. Appellants explain that the absence from the federal transcript of the specifics of the alleged substantial reduction of the federal tax is due to the fact that the resolution occurred at “the proposed stage of issues.” In support of their arguments, appellants provide copies of IRS CP2000 notices dated September 15, 2017, and June 11, 2018. The former shows a many-fold increase of appellants’ taxable dividends and a corresponding increase of their taxable income. The latter shows essentially the same increases, but a much-reduced tax. Appellants also provide an IRS Account Transcript for 2015, which shows appellants’ payment of \$1,438 in additional tax, but no specific adjustment to taxable income.

Respondent argues that the evidence shows that appellants failed to report the payout dividends on their federal and state returns, that the IRS determined that the payout dividends should have been reported on the federal return as ordinary and qualified dividends, and that, if this had been done, the payout dividends would have been included on appellants’ Form 540 as taxable income. It also asserts that M. Bayot’s IRS Wage and Income Transcript for 2015 shows the receipt of the payout dividends and that appellants’ IRS Account Transcript shows appellants’ federal adjusted gross income of \$94,718, their federal taxable income of \$71,618, and the additional tax due of \$1,438. According to respondent, the federal adjustment was reduced due to the IRS’s favorable treatment of the payout dividends as qualified dividends, a treatment with which California does not conform.

The evidence shows that appellants received the payout dividends in 2015. Except as otherwise provided by statute, dividends are included in gross income. (R&TC, § 17071; Internal Revenue Code, § 61(a)(7).) Based on the evidence, we find that there was a reduction in the federal determination due to the IRS’s favorable tax treatment for qualified dividends. The IRS deducted the payout dividends from appellants’ taxable income to calculate the taxable portion of the qualified payout dividends ( $\$71,618 - \$57,266 = \$14,352$ ) and then used the Tax Table to calculate the tax of \$1,438. However, the evidence also shows that there was no reduction of the federal determination that appellants’ adjusted gross income for 2015 was \$94,718. Federal adjusted gross income is where the calculation of California taxable income begins. Respondent does not conform to the IRS’s favorable treatment of qualified dividends,

and appellants do not argue otherwise. (See R&TC, § 17041 [no exclusion or different rate for qualified dividends].) Consequently, based on the evidence, we find that respondent correctly calculated appellants’ additional tax liability based on the federal determination.

HOLDING

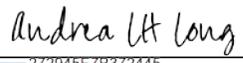
Appellants have not shown that the proposed assessment of additional tax for the 2015 tax year, which was based on federal adjustments, is wrong.

DISPOSITION

Respondent’s action is sustained.

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Michael F. Geary  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

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Administrative Law Judge

Date Issued: 10/6/2020