

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**X. CHEN**

) OTA Case No. 19095213  
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**OPINION**

Representing the Parties:

For Appellant: Alan Spiegel, CPA

For Respondent: Christopher T. Tuttle, Tax Counsel

For Office of Tax Appeals: Michelle Huh, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, X. Chen (appellant) appeals an action by respondent Franchise Tax Board proposing additional tax of \$3,448, plus interest, for the 2014 tax year.

The matter is being decided based on the written record because appellant waived her right to an oral hearing.

**ISSUE**

Has appellant established error in respondent’s proposed assessment of additional tax, plus interest, based on federal adjustments?

**FACTUAL FINDINGS**

1. Appellant timely filed a federal tax return (Form 1040) for the 2014 tax year, reporting wages as an employee of a bank and losses from the operation of a financial services business and a vacation rental business, resulting in a refund.
2. Appellant timely filed a California individual income tax return (Form 540) for the 2014 tax year, reporting the adjusted gross income (AGI) from the federal return. After California adjustments (subtractions), itemized deductions, and an exemption credit, appellant claimed an overpayment and a refund.

3. Respondent accepted appellant's Form 540 for the 2014 tax year and issued appellant the refund on April 20, 2015.
4. Respondent received information that the IRS audited appellant's 2014 tax year, resulting in a federal determination that increased appellant's AGI and tax.
5. Based on the federal determination, respondent made corresponding adjustments and issued to appellant an August 16, 2018 Notice of Proposed Assessment (NPA), which more than doubled appellant's taxable income and proposed additional tax, plus interest, based on disallowed claimed business expenses (taxes and licenses, car and truck expenses, and rent/lease expenses), increased gross receipts or sales, and decreased self-employment tax.<sup>1</sup>
6. Appellant timely protested the NPA, arguing, in part, that she had *underreported* the rent/lease expense incurred in her vacation rental business,<sup>2</sup> asserting that she had filed an additional claim for refund in the form of an amended return (Form 1040X) with supporting documentation with the Internal Revenue Service (IRS), and asking respondent to delay further action to allow the IRS an opportunity to consider the new information and make adjustments.
7. In her Form 1040X, appellant reported a \$57,348 reduction to the taxable income disclosed in the federal determination and claims an additional refund of \$16,094.<sup>3</sup>
8. Respondent acknowledged appellant's protest and, in an April 8, 2019 letter to appellant, confirmed its agreement to delay action for a time, but advised appellant to contact respondent if the federal matter had not been resolved by July 1, 2019. This letter was

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<sup>1</sup> Although respondent produced a copy of appellant's 2014 federal account transcript, respondent did not produce a copy of appellant's 2014 FEDSTAR IRS Data Sheet, which should list the specific federal adjustments. We note, however, that appellant does not dispute that the proposed assessment accurately reflects the 2014 federal adjustments.

<sup>2</sup> Appellant states that she would rent property from owners and then try to rent the property at a profit to vacationers using online marketplaces like Airbnb.com.

<sup>3</sup> Appellant's amended federal filing does not explain how appellant calculated the taxable income reduction other than to state that the business deduction originally claimed for rent/lease expenses should have been approximately 54 percent higher and that the examiner erroneously disallowed amounts paid for errors and omissions insurance coverage, because it was misidentified as "taxes and licenses" on the Schedule C for the financial services business. As relevant here, appellant further states that she agrees with the rest of the adjustments, "with the exception of the statutory adjustments" and that she has not provided substantiation for the claimed deductions because it was "too voluminous to send with the amended return....."

returned as undeliverable and unable to be forwarded.<sup>4</sup> Appellant has not provided substantiation for the disallowed expenses or shown that the federal adjustments have changed.

9. Respondent issued a Notice of Action dated August 5, 2019, affirming the NPA and indicating that the IRS denied appellant's 2014 Form 1040X claim for refund.
10. Appellant timely filed this appeal on August 30, 2019, and requested a 30-day extension, purportedly to contact the IRS on the status of her 2014 Form 1040X. Appellant states, "All of the substantiation was sent to the IRS on an amended return[,] but nothing has been heard back to date." Appellant asserts that, although she could send the same substantiation to respondent, she would first like to resolve this matter with the IRS. The Office of Tax Appeals (OTA) agreed to defer proceedings until October 23, 2019.
11. By letter dated November 12, 2019, OTA advised appellant that the deferral had expired.
12. Respondent filed its opening brief on January 9, 2020. Appellant has filed nothing further with OTA.

#### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency assessment based on a federal audit report is presumptively correct, and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

The taxpayer also bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Robinson*, 2018-OTA-059P.) To support a deduction, the taxpayer must establish by credible evidence, other than mere assertions, that the deduction claimed falls within the scope of a statute authorizing the deduction. (*Ibid.*)

Here, the IRS adjustments resulted in a substantial increase to appellant's AGI. Almost all of that increase was the result of the IRS disallowing most of appellant's claimed business deductions, as reported on Schedule C. Under these circumstances, respondent's corresponding

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<sup>4</sup> Respondent also sent a copy of this letter to appellant's representative.

increase was entirely appropriate, and appellant has failed to demonstrate here that the federal determination was incorrect or that the IRS has since adjusted the federal determination.

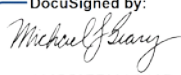
Furthermore, appellant has failed to provide substantiation for the disallowed claimed business expenses or any evidence to refute respondent’s determination that appellant failed to report all gross receipts or sales income. While appellant filed a Form 1040X, which reported a substantial reduction to income shown on the federal determination and claimed an additional refund of \$16,094, we do not know whether appellant provided any substantiation of the claimed business expenses or even an adequate explanation of the adjustments shown on the Form 1040X. However, we do know that the IRS did not accept the amounts reported on the Form 1040X as filed and denied the refund claim. We find that appellant has thus failed to carry the burden of proof.

HOLDING

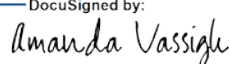
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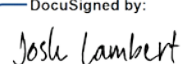
DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
  
7B17E958B7C14AC  
Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
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Josh Lambert  
Administrative Law Judge

Date Issued: 12/23/2020