

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

In the Matter of the Appeal of:  
**M. LICAUSE**

) OTA Case No. 20015656  
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**OPINION**

Representing the Parties:

For Appellant: M. Licause

For Respondent: Angelina Yermolich, Legal Assistant

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Licause (appellant) appeals an action by the respondent Franchise Tax Board proposing \$3,693 of additional tax and applicable interest, for the 2015 tax year.

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

**ISSUE**

Whether appellant has demonstrated error in the proposed assessment of additional tax.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2015 California personal income tax return.<sup>1</sup>
2. Subsequently, respondent reviewed appellant’s return and determined that she incorrectly subtracted an IRA distribution of \$53,903. Therefore, respondent issued a Notice of Proposed Assessment (NPA) dated June 7, 2019, that disallowed the subtraction and proposed additional tax of \$3,693, plus applicable interest.
3. Appellant protested respondent’s proposed assessment in a letter dated July 9, 2019.

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<sup>1</sup> Appellant filed a joint return with her spouse, M. Evangelista; however, only appellant has filed this appeal and therefore she is the sole appellant in this matter.

4. Respondent subsequently issued a Notice of Action (NOA) dated December 27, 2019, which affirmed the NPA.
5. This timely appeal followed.

#### DISCUSSION

Respondent's determination of tax is presumed to be correct and a taxpayer has the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Respondent's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Generally, distributions from a traditional IRA are taxable in the year they are received (Internal Revenue Code (IRC), §§ 72(a), 408(d)(1); R&TC, § 17507.) California conforms to the current federal treatment of IRA distributions with some exceptions for IRAs with a pre-1987 basis. (R&TC, § 17507.)

On appeal, appellant provides no arguments or evidence but merely states that she has not received respondent's letter mailed on October 18, 2019, and requests that it be resent. Respondent included this letter as Exhibit D to its Opening Brief, which was provided to appellant. Appellant did not respond to respondent's brief, although she had the opportunity to do so. We find that appellant has not met her burden of proving error with respondent's determination.<sup>2</sup>

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<sup>2</sup> In her protest letter dated July 9, 2019, appellant argued that no tax was due because the 1099-R that she provided showed no state taxable income in box 14 of the form. This form is insufficient to meet appellant's burden as Box 2b is also checked indicating that the taxable amount was not determined.

HOLDING

Appellant has failed to demonstrate error in respondent’s proposed assessment of additional tax.

DISPOSITION

Respondent’s action is sustained

DocuSigned by:  
*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Nguyen Dang*  
\_\_\_\_\_  
Nguyen Dang  
Administrative Law Judge

DocuSigned by:  
*Richard Tay*  
\_\_\_\_\_  
Richard Tay  
Administrative Law Judge

Date Issued: 12/21/2020