

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20025904  
**R. CASSELBERRY** )  
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**OPINION**

Representing the Parties:

For Appellant: R. Casselberry

For Respondent: Rachel Abston, Senior Legal Analyst

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Casselberry (appellant) appeals an action by Franchise Tax Board (FTB) proposing additional tax of \$1,819, plus applicable interest, for the 2015 tax year.

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

**ISSUE**

Whether appellant has demonstrated error in FTB’s proposed assessment of additional tax for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2015 joint California Resident Income Tax return (Form 540) reporting total tax of \$5,985.<sup>1</sup>
2. Appellant’s Form 540 as originally filed contained math errors, which FTB corrected in a Return Information Notice (RIN) issued to appellant. The RIN reduced appellant’s California adjusted gross income (AGI) by \$2,000 so that it matched his federal AGI and reduced appellant’s total tax to \$5,465.

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<sup>1</sup> Appellant filed a joint return with his spouse, AC. However, AC has not joined this appeal, which has been brought in R. Casselberry’s name only.

3. On May 18, 2016, FTB issued a refund of \$496.93 to appellant.
4. FTB subsequently received information from the Internal Revenue Service (IRS) in the form of a FedStar Data Sheet indicating that appellant had reported federal itemized deductions on his federal Schedule A of \$23,360 (including a \$9,558 deduction for state and local taxes) and claimed a \$2,000 federal tuition and fees deduction.<sup>2</sup>
5. FTB reviewed appellant's return and issued a Notice of Proposed Assessment (NPA). The NPA proposed the following adjustments to appellant's income for the 2015 tax year: (i) disallowance of the \$2,000 tuition and fees deduction; (ii) a \$2,000 adjustment for a "transfer error;"<sup>3</sup> (iii) disallowance of appellant's \$5,738 remaining state and local tax deduction;<sup>4</sup> and (iv) disallowance of the \$9,823 "other adjustments" addition appellant claimed that increased his California itemized deductions.<sup>5</sup> These adjustments increased appellant's taxable income by \$19,561 and resulted in total tax of \$7,284. After subtracting tax as revised by the RIN of \$5,465, the NPA proposed additional tax of \$1,819, plus applicable interest.
6. Appellant timely protested the NPA.

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<sup>2</sup> While Internal Revenue Code (IRC) section 222 permits a federal deduction for qualified tuition and related expenses and IRC section 164 permits federal deductions for state and local income and sales taxes paid, R&TC sections 17204.7 and 17220(a) and (b) expressly provide that these IRC sections shall not apply for California tax purposes.

<sup>3</sup> With respect to this adjustment, the NPA explained, "Your California [AGI] has been revised to correct a mathematical error. This error occurred when California adjustments computed on Schedule CA, were subtracted from instead of added to federal [AGI]." This NPA adjustment, however, appears to have been made in error as appellant did not actually subtract \$2,000 from his federal AGI in computing his California AGI. While appellant reported both a California adjustment (addition) of \$2,000 and a California adjustment (subtraction) of \$2,000 on his Form 540 (Side 2), appellant's Form 540 reported California AGI that was \$2,000 *greater* than his federal AGI. Because the \$2,000 addition and the \$2,000 subtraction net to \$0, FTB treated this as a math error and revised appellant's California AGI so that it equaled his federal AGI in the RIN issued to appellant prior to this NPA. Thus, there was no subtraction of \$2,000 from appellant's federal AGI as stated in the NPA. Instead, after issuance of the RIN, appellant's California AGI was equal to appellant's federal AGI. Because the NPA already proposes a separate \$2,000 adjustment for the disallowed tuition and fees deduction, there is no need for a second adjustment to correct a "mathematical error."

<sup>4</sup> Per the FedStar Data Sheet, appellant reported a \$9,558 deduction for state and local taxes on his federal Schedule A; however, appellant only reduced his California itemized deductions by \$3,820 for state and local taxes per Part II of his Schedule CA. Thus, FTB's \$5,738 adjustment, which is equal to \$9,558 minus \$3,820, further reduces appellant's California itemized deductions such that he received no deduction for state and local taxes in accordance with California tax law, as noted above.

<sup>5</sup> With respect to this adjustment, the NPA explained, "We are denying the amount you added to your itemized deductions on your Schedule CA, Part II. You did not identify this amount."

7. FTB subsequently issued a Notice of Action (NOA) affirming the NPA and this timely appeal followed.
8. On appeal, appellant provides an amended return for the 2015 tax year. Appellant explains that the amended return shows how appellant's tax return "should have looked." The amended return provided by appellant: (i) increases appellant's federal and California AGI and taxable income by the \$2,000 disallowed tuition and fees deduction; (ii) reports California itemized deductions totaling \$13,802;<sup>6</sup> and (iii) increases appellant's federal and California AGI and taxable income by an unexplained adjustment in the amount of \$21. These adjustments increase appellant's taxable income by \$17,581<sup>7</sup> and result in total tax of \$7,100. After subtracting tax payments of \$5,985, appellant reports additional tax due of \$1,115, plus applicable interest.
9. FTB did not accept appellant's amended return.
10. In its opening brief, FTB contends that the amended return provided by appellant contains errors. FTB provides a "corrected" Form 540 and Schedule CA, which FTB contends shows how appellant should have filed the return. The tax computation per the "corrected" Form 540 provided by FTB is identical to the tax computation per appellant's amended return except it does not contain the unexplained \$21 adjustment to appellant's federal and California AGI and taxable income. FTB's "corrected" Form 540 increases appellant's taxable income by \$17,560<sup>8</sup> and results in total tax of \$7,098. After subtracting tax payments of \$5,465, FTB reports a revised additional tax assessment of \$1,633, plus applicable interest.

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<sup>6</sup> This amount is equal to appellant's federal itemized deductions of \$23,360 less the \$9,558 federal deduction for state and local taxes.

<sup>7</sup> This amount is equal to the \$21 unexplained adjustment made by the appellant on the amended return, plus the following adjustments made per FTB's NPA: (i) the disallowance of the \$2,000 tuition and fees deduction; (ii) the disallowance of the \$5,738 remaining state and local tax deduction; and (iii) the disallowance of the \$9,823 "other adjustment" addition to appellant's California itemized deduction. It does not include the \$2,000 "transfer error" adjustment made per FTB's NPA.

<sup>8</sup> This amount is equal to the following adjustment's made per FTB's NPA: (i) the disallowance of the \$2,000 tuition and fees deduction; (ii) the disallowance of the \$5,738 remaining state and local tax deduction; and (iii) the disallowance of the \$9,823 "other adjustments" addition to appellant's California itemized deduction. It does not include the \$2,000 "transfer error" adjustment made per FTB's NPA. It also does not include the \$21 unexplained adjustment made by appellant on the amended return and differs from appellant's computation by this \$21.

11. FTB concedes the remaining \$186 of additional tax proposed in its NPA and NOA (\$1,819 - \$1,633 = \$186).

### DISCUSSION

FTB's determinations are generally presumed correct, and taxpayers bear the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

FTB's NPA proposed four adjustments to appellant's 2015 taxable income:

(1) disallowance of the \$2,000 tuition and fees deduction; (2) a \$2,000 adjustment for a "transfer error"; (3) disallowance of the \$5,738 remaining state and local taxes deduction; and (4) disallowance of appellant's \$9,823 "other adjustment" addition to his California itemized deductions. FTB concedes the \$2,000 "transfer error" adjustment as this adjustment is not included in its "corrected" Form 540 and Schedule CA provided with its opening brief. Appellant concedes the remaining three adjustments as all three of these adjustments are included in the amended return appellant provides on appeal. Thus, the only remaining issues are: (1) the unexplained \$21 adjustment (i.e., increase) to appellant's income reported by appellant on his amended return; and (2) the computation of appellant's additional tax assessment resulting from these agreed adjustments.

With respect to the \$21 adjustment reported on appellant's amended tax return, appellant has not provided any explanation for this adjustment. Because this \$21 increase to appellant's income is unexplained and unsupported by appellant and would make appellant's federal AGI as reported for California tax purposes \$21 greater than appellant's federal AGI as reported per the IRS on the FedStar Data Sheet, we concluded that this adjustment is not warranted.

Additionally, we note that FTB's computations of appellant's 2015 total tax, which does not include this \$21 adjustment, is more favorable to appellant because it results in total tax of \$7,098 compared to total tax of \$7,100, as computed by appellant on his amended return.

With respect to the resulting additional tax computation, we note that appellant computes revised additional tax of \$1,115 by subtracting the tax as reported on his original tax return (i.e., \$5,985) from his revised total tax of \$7,100 as computed on his amended return (\$7,100 - \$5,985 = \$1,115). FTB, on the other hand, computes revised additional tax of \$1,633 by subtracting tax

as revised in its RIN (i.e., \$5,465) from appellant’s revised total tax of \$7,098 as computed on its “corrected” Form 540 (\$7,098 - \$5,465 = \$1,633). Appellant’s computation, which uses the tax as reported on his original return, fails to consider the subsequent adjustment FTB made to appellant’s total tax per its RIN and the resulting refund of tax it issued to appellant on May 18, 2016. FTB’s computation correctly uses appellant’s tax as revised by the RIN in its computation.

Thus, appellant has not established error in FTB’s computation of additional tax as revised during this appeal. FTB’s additional tax assessment is revised from \$1,819 per the NPA and NOA to \$1,633 as computed by FTB in its “corrected” Form 540 provided on appeal.

HOLDING

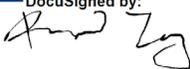
Appellant has not demonstrated error with FTB’s proposed assessment of additional tax for the 2015 tax year, as revised by FTB on appeal.

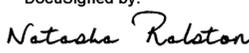
DISPOSITION

FTB’s action, as revised and described herein above, is sustained.

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Cheryl L. Akin  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

DocuSigned by:  
  
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Natasha Ralston  
Administrative Law Judge

Date Issued: 1/4/2021