

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
G. GOLBERG

) OTA Case No. 20066289
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OPINION

Representing the Parties:

For Appellant: G. Golberg

For Respondent: Rachel Abston, Senior Legal Analyst

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Golberg (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$3,795 of additional tax, plus applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellant is entitled to a reduction of the proposed additional tax for the 2015 tax year.

FACTUAL FINDINGS

1. For the 2015 tax year, appellant and his spouse timely filed a joint California Resident Income Tax Return (Form 540 2EZ), reporting total wages of \$106,174 and tax of \$3,979.¹ After applying a California withholding credit of \$5,594, appellant and his spouse reported overpaid tax of \$1,615.

¹ Although appellant and his spouse jointly filed Form 540 2EZ, and FTB corresponded with both individuals regarding the proposed additional tax at issue, appellant filed this appeal in his name only. Accordingly, we refer only to appellant in this Opinion.

2. From the overpaid tax of \$1,615, FTB applied \$1,318.60 to the 2014 tax year, sent \$102 to the City of Inglewood's Parking Services department,² and refunded \$194.40, plus applicable interest, to appellant.
3. Subsequently, FTB received information from the Internal Revenue Service (IRS) that the IRS had increased appellant's reported total wages of \$106,174 by unreported wages of \$41,399. Appellant did not report this federal adjustment to FTB.
4. The federal adjustment became a final federal assessment, and the IRS did not cancel or reduce this assessment.
5. Based on the information received from the IRS, FTB mailed a Notice of Proposed Assessment (NPA) to appellant on June 13, 2019. This NPA increased appellant's taxable income by unreported wages of \$41,399, resulting in revised tax of \$7,774. After subtracting originally reported tax of \$3,979 from the revised tax of \$7,774, the NPA proposed additional tax of \$3,795, plus applicable interest.
6. Appellant filed a timely protest, contending that he had already paid the tax due.
7. By subsequent letter, FTB explained its position and requested a response from appellant. Receiving none, FTB issued a Notice of Action (NOA) affirming its NPA to appellant on May 13, 2020.
8. Appellant then filed this timely appeal.
9. With his appeal, appellant includes copies of two W-2 (*Wage and Tax Statement*) forms (W-2 forms) for the 2015 tax year: (1) an amended W-2 form showing wages of \$106,174 and a California withholding credit of \$5,594 from Pani Networks; and (2) a W-2 form showing wages of \$41,399 and a California withholding credit of \$2,140 from Exponential Interactive.
10. In its opening brief dated August 19, 2020, FTB contends that, based on the Exponential Interactive W-2 form, appellant failed to report wages of \$41,399; however, FTB also concedes that FTB did not credit him with additional California withholding of \$2,140. Accordingly, FTB reduces the amount of proposed additional tax by \$2,140, from \$3,795 to \$1,655, plus applicable interest.

² In its August 19, 2020 appeal brief, FTB stated that it sent this \$102 to the California Health Facilities Financing Authority, but the supporting documentation indicates that the recipient was the City of Inglewood's Parking Services department.

DISCUSSION

An individual taxpayer must report to FTB an IRS adjustment to any item required to be shown on a federal tax return if the adjustment results in additional tax; furthermore, a taxpayer must either concede the accuracy of the adjustment or state where it is erroneous. (R&TC, § 18622(a).) A deficiency determination based on a federal assessment is presumed 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.*)

Appellant does not dispute the accuracy of the federal adjustment, but contends that FTB erred in calculating the proposed additional tax based on the federal adjustment. Specifically, appellant contends that he owes no additional tax due to total California withholding of \$7,734 (\$5,594 by Pani Networks + \$2,140 by Exponential Interactive) for the 2015 tax year.

Here, FTB concedes that it did not credit appellant with California withholding of \$2,140, which is documented by the Exponential Interactive W-2 form appellant provides on appeal. FTB’s concession reduces the proposed additional tax from \$3,795 to \$1,655. But contrary to appellant’s contention, his wage withholding of \$5,594 by Pani Networks is unavailable to satisfy this revised proposed additional tax.³ Accordingly, our review of the record discloses no further errors in FTB’s calculation of the revised tax balance due of \$1,655.⁴

³ Specifically, FTB allotted the full \$5,594 in the following manner: applied \$3,979 to the 2015 tax year; applied \$1,318.60 to the 2014 tax year; sent \$102 to the City of Inglewood Parking Services department; and refunded \$194.40, plus applicable interest, to appellant.


⁴ In its opening brief, FTB appears to have inadvertently erred when stating that the “proposed additional tax” in the NPA/NOA should be revised to \$1,655. The NPA/NOA correctly computed the proposed additional tax of \$3,795 by subtracting appellant’s originally reported tax of \$3,979 from appellant’s revised tax of \$7,774. Typically, tax payments such as appellant’s additional withholdings are not applied until *after* the NPA/NOA becomes final. However, because FTB concedes that appellant’s additional tax should be reduced by additional withholdings of \$2,140, we note that the NPA/NOA’s proposed additional tax of \$3,795 will be subsequently reduced by appellant’s additional withholdings of \$2,140 in computing appellant’s tax balance due for the 2015 tax year. This results in a revised tax balance due of \$1,655 (proposed additional tax of \$3,795 less additional withholdings of \$2,140), plus applicable interest, for the 2015 tax year.

HOLDING

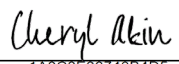
Appellant is not entitled to a reduction of the proposed additional tax of \$3,795 for the 2015 tax year, but is entitled to an additional California withholding credit of \$2,140, which will reduce his tax balance due to \$1,655, plus applicable interest.

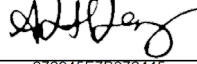
DISPOSITION

We modify FTB’s action per its concession on appeal.⁵ Otherwise, we sustain FTB’s action.

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Andrew Wong
Administrative Law Judge

We concur:

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1A8C8E38740B4D5...
Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 12/29/2020

⁵ See footnote 4, *ante*, page 3.