

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20036047
A. RAMOS, JR. AND)
E. RAMOS)
_____)

OPINION

Representing the Parties:

For Appellants: A. Ramos, Jr. and E. Ramos

For Respondent: Angelina Yermolich, Legal Assistant

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Ramos, Jr. and E. Ramos (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$631, plus applicable interest, for the 2015 tax year.

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

ISSUE

Whether appellants have established error in FTB’s proposed assessment.

FACTUAL FINDINGS

1. FTB examined appellants’ joint 2015 California resident income tax return and determined they improperly excluded taxable wages of \$18,941 and increased their itemized deductions by \$2,789. Consequently, FTB issued a Notice of Proposed Assessment (NPA) making these adjustments to appellants’ taxable income and proposing additional tax, plus applicable interest.
2. Appellants protested the NPA, contending the excluded wages of \$18,941 are not taxable. They asserted that of that amount, \$9,288 relates to earnings by appellant-wife from an In-Home Supportive Services (IHSS) program for caring for her mother, and the

remaining amount, apparently \$9,653, relates to contributions to appellant-husband's employer's deferred compensation plan, as reflected on his Internal Revenue Service (IRS) Form W-2 (box 12, code G).¹ They also asserted the disallowed itemized deduction of \$2,789 was based on IRS Form 1098-T for payment of their daughter's college tuition and related expenses.²

3. Based on information appellants provided during protest, FTB agreed to remove from their taxable income appellant-wife's IHSS earnings of \$9,288, but made no further adjustments. It explained that the contribution amount shown on appellant-husband's Form W-2 was "for information purposes only" (and therefore the \$9,653 is taxable), and California does not allow a deduction for tuition and related fees (and therefore the \$2,789 cannot be deducted). FTB issued a Notice of Action, reducing the proposed additional tax in its NPA to \$631, plus applicable interest. This timely filed appeal followed.

DISCUSSION

FTB's determination is presumed correct, and a taxpayer has the burden of proving error. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient 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.)

We find no error in FTB's proposed assessment. Appellants are not entitled to exclude appellant-husband's wages of \$9,653 because they have not shown it consists of deferred compensation income improperly included in taxable wages on Form W-2 (box 1, related to wages). In addition, California does not conform to federal law (Int.Rev. Code, § 222) allowing a deduction for qualified tuition and related expenses; thus, appellants are also not entitled to deduct \$2,789. (R&TC, § 17204.7.)

¹ Box 12, code G, is used to show elective deferrals and employer contributions (including nonelective deferrals) to any governmental or nongovernmental Internal Revenue Code section 457(b) deferred compensation plan. We note that appellant-husband's Form W-2 (box 12, code G) shows \$11,325, and appellants have not explained why this amount is different from the \$9,653.

² Appellants allege they paid \$6,370, which is the amount found on Form 1098-T (box 2, related to "amounts billed for qualified tuition and related expenses"), but we note they only deducted \$2,789.

On appeal, appellants do not contend otherwise. Rather, they appear to assert they are experiencing financial hardship due to COVID-19 and request that the Office of Tax Appeals (OTA) either forgive, or reduce in half, the amount owed. While we are sympathetic to appellants’ financial situation, OTA does not have the statutory authority to adjust a taxpayer’s tax liability based on the taxpayer’s difficulties in making payments. OTA also cannot propose compromises or settlements, since the only power that we have is to determine the correct amount of appellants’ California tax liability for the appeal year. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) Rather, FTB has statutory authority to settle disputed liabilities with taxpayers, and to compromise certain final liabilities. (R&TC, §§ 19442, 19443.)

HOLDING

Appellants have not established error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
B90E40A720E3440...
Josh Lambert
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge

Date Issued: 2/17/2021