

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

In the Matter of the Appeal of:  
**Y. SHAW**

) OTA Case No. 20096686  
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**OPINION**

Representing the Parties:

For Appellant: Y. Shaw

For Respondent: Rachel Abston, Senior Legal Analyst

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Y. Shaw (appellant)<sup>1</sup> appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,214, plus applicable interest, for the 2016 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 shown error in FTB’s proposed assessment, which is based on information provided by the Internal Revenue Service (IRS).

**FACTUAL FINDINGS**

1. Appellant filed a joint 2016 California resident income tax return. Subsequently, FTB received information from the IRS showing that it had increased appellant’s 2016 federal adjusted gross income (AGI) by \$13,054 for unreported securities income and assessed additional tax.

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<sup>1</sup> This appeal was filed in appellant’s name only, even though appellant filed a joint California tax return with appellant’s spouse for the tax year at issue. Therefore, we refer only to appellant for purposes of this appeal.

2. Based on the IRS information, FTB issued a Notice of Proposed Assessment (NPA) that increased appellant's California taxable income by the \$13,054 and proposed additional tax of \$1,214, plus applicable interest.
3. Appellant protested the NPA, contending that "[t]he revised taxable income is based on securities that were part of the Dell-EMC merger. When the merger happened, [appellant] was employed by RSA which is a subsidiary of EMC and was affected by the merger. These were [restricted stock units] and were apparently taxed at a \$0 cost basis instead of the appropriate amount."
4. FTB denied appellant's protest and issued a Notice of Action, affirming its NPA. This timely appeal followed.

### 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. It is settled law that a deficiency determination based on a federal audit is presumptively correct and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellant contends the \$13,054 of unreported securities income relates to a sale of restricted stock units "that automatically occurred due to Dell acquiring EMC at which [appellant] was employed." Appellant disagrees with FTB's interpretation of the federal information, alleging that while the gross proceeds of \$13,054 from the stock sale were reported to the IRS (via IRS Form 1099-B), the stock basis (in the same amount, \$13,054) was not. Therefore, appellant maintains, there was no gain on the sale.

As support, appellant submits amended 2016 federal and California tax returns that report a stock basis of \$13,054.<sup>2</sup> The purported amended 2016 federal tax return shows a sales price of \$13,054, a cost basis of the same amount, and gain or loss of \$0, as reflected on Schedule D (capital gains and losses) and Form 8949 (sales and other dispositions of capital assets). The

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<sup>2</sup> These amended tax returns, attached to appellant's appeal letter, are undated and unsigned, but the ones submitted during protest, attached to FTB's opening brief, are dated and signed. As relevant here, the information contained in both sets of amended tax returns are otherwise the same.

amended 2016 California tax return incorporates the additional income of \$13,054 made in the NPA, but then shows a reduction to income of the same amount and no additional tax due.

However, the amended tax returns do not support a stock basis of \$13,054 because they are not substantiated by underlying support.<sup>3</sup> (See *Roberts v. Commissioner* (1974) 62 T.C. 834, 837 [merely signing a tax return under penalty of perjury does not establish the facts contained therein].) The record also contains no evidentiary foundation to enable us to estimate appellant's basis, such as, for example, whether appellant recognized income upon the restricted stock's vesting to support a cost basis of the same amount when, as here, it is ultimately sold.<sup>4</sup> (See *Shank v. Commissioner*, T.C. Memo. 2018-33.) Moreover, appellant's federal account transcript for the 2016 tax year, dated September 29, 2020, confirms the IRS increased appellant's federal AGI by the \$13,054, assessed additional tax (which appellant paid), and did not cancel or revise its determination.<sup>5</sup> Accordingly, since California generally conforms to federal AGI and stock basis computations (see R&TC, §§ 17072, 18031), we find that appellant failed to substantiate stock basis of \$13,054.

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<sup>3</sup> The evidentiary record also includes Schedule 14A (containing information about the Dell-EMC transaction) filed by EMC Corporation with the U.S. Securities and Exchange Commission. But this schedule is unhelpful because it contains no specific information about appellant's stock basis.

<sup>4</sup> According to FTB, after appellant filed the appeal letter, it contacted appellant to request additional information on the stock basis, but appellant stated nothing was received from the IRS related to the amended 2016 federal tax return and there was no documentation provided from the merger to support the basis.

<sup>5</sup> That transcript also does not reveal appellant filed an amended 2016 federal return, but even if one was filed, that fact alone still does not corroborate a stock basis of \$13,054.

HOLDING

Appellant has not shown error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

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*Kenneth Gast*

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Kenneth Gast

Administrative Law Judge

We concur:

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Huy "Mike" Le

Administrative Law Judge

DocuSigned by:

*Sheriene Anne Ridenour*

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Sheriene Anne Ridenour

Administrative Law Judge

Date Issued: 2/24/2021