

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19064910  
**O. TORRES-MORAGA** )  
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**OPINION**

Representing the Parties:

For Appellant: Ariella Mehrzadi, Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Diane M. Deatherage, Specialist<sup>2</sup>

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, O. Torres-Moraga (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$14,248, plus interest, for the 2011 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 of additional tax.

**FACTUAL FINDINGS**

1. On June 25, 2012, appellant filed a timely California resident income tax return for the 2011 tax year.
2. On August 10, 2015, FTB received an IRS Data Sheet indicating the IRS increased appellant’s federal taxable income by \$163,704, which included adjustments to

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<sup>1</sup> Appellant filed her opening brief. Marika Sinnis of TAAP filed appellant’s reply brief.

<sup>2</sup> Diane M. Deatherage of FTB filed its opening brief. Nancy Parker, Tax Counsel IV, of FTB filed its reply brief.

Schedule E and Schedule A. The Data Sheet indicated a revised taxable income of \$34,147 and tax due of \$4,694.

5. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) to appellant. The NPA increased appellant's taxable income by \$163,704 and proposed additional tax of \$14,248, plus interest.
6. Appellant timely protested the NPA and FTB issued a Notice of Action (NOA), affirming the NPA. This timely appeal followed.
7. Appellant paid the tax and interest due as indicated on the NOA. If the Office of Tax Appeals determines that the proposed assessment of tax was made in error, the payment will be provided to appellant after such a determination is final.

### 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 well settled that a deficiency assessment based on a federal determination is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellant argues that the federal audit did not result in an assessment. However, FTB provides a copy of appellant's 2011 IRS Account Transcript dated August 22, 2019, which indicates an assessment of additional federal tax of \$4,694, which is the same amount as indicated on the IRS Data Sheet. The transcript also states the examination is closed and does not indicate there are any pending actions. Appellant argues that the IRS adjustments do not match FTB's adjustments. However, FTB increased appellant's taxable income by \$163,704, which is the same amount of the federal adjustments, as described on the IRS Data Sheet.

Appellant also asserts that her revised federal taxable income is \$34,147 and her revised California taxable income is \$181,765, which accounts for an unexplained difference of \$129,557. However, based on differences between federal and California tax law, appellant reported on her California tax return an adjustment to increase her federal adjusted gross income (AGI) by \$143,918 to calculate her California AGI. Therefore, a difference of \$143,918 between appellant's federal and California AGI was reported by appellant and did not result from FTB's adjustments. Appellant has not established that the California adjustment reported on her California tax return related to the same items that were adjusted by the IRS per its audit

examination, and appellant provides no evidence demonstrating that FTB’s adjustments, based on a final federal determination, were in error. Accordingly, appellant has not met her burden of proof.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Josh Lambert*  
CB1F7DA37831416...  
Josh Lambert  
Administrative Law Judge

We concur:

DocuSigned by:  
*Richard Tay*  
F8E81582726F448...  
Richard Tay  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
4283B8CD40F34BC...  
Kenneth Gast  
Administrative Law Judge

Date Issued: 3/10/2021