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2021 – OTA – 134
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. MIRANDA AND E. MIRANDA**	) OTA Case No. 19085158

OPINION

Representing the Parties:

For Appellants: Paul S. Blason, C.P.A., M.S.T

For Respondent: Bradley J. Coutinho, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Miranda and E. Miranda (appellants) appeal actions by Franchise Tax Board (respondent) proposing $1,746 of additional tax, plus applicable interest, for the 2014 tax year, and $3,349 of additional tax, plus applicable interest, for the 2015 tax year.

Appellants waived their right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUE

Whether appellants have established error in respondent's proposed assessments, which are based on federal adjustments.

FACTUAL FINDINGS

1. Appellants timely filed their 2014 and 2015 California Resident Income Tax Returns.
2. Subsequently, respondent received information from the Internal Revenue Service (IRS) in the form of FEDSTAR IRS Data Sheets, indicating that upon examination, the IRS increased appellants' 2014 and 2015 federal taxable income and assessed additional tax. As applicable to this appeal, the Data Sheets show that the IRS disallowed various claimed Schedule C expenses and other costs (for sole proprietorships). Appellants did not notify respondent of the federal adjustments.

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3. Consistent with the federal adjustments, respondent issued appellants Notices of Proposed Assessment (NPAs) for the 2014 and 2015 tax years on October 11, 2018, and November 6, 2018, respectively, which proposed additional tax, plus interest.
4. Appellants timely protested the NPAs, asserting that the federal adjustments were not final.
5. Approximately four months later, in April 2019, respondent sent appellants a letter stating that appellants' federal account transcripts received by respondent do not show any changes to the original federal assessment or that appellants are under audit reconsideration.
6. On May 23, 2019, appellants sent respondent a letter, attaching an IRS Form 911 Request for Taxpayer Advocate Service Assistance, signed on May 22, 2019. On this form, appellants requested the assistance of the IRS Taxpayer Advocate because appellants alleged the IRS prematurely closed both the 2014 and 2015 tax years.
7. Respondent issued Notices of Action dated July 31, 2019, affirming the NPAs.
8. Appellants filed this timely appeal.
9. On appeal, respondent provided appellants' 2014 and 2015 federal Account Transcripts (federal transcripts), both dated February 10, 2020. The federal transcripts indicate that, in June 2017, the IRS closed its examination for both tax years, assessed additional tax, and made no further federal adjustments to the assessment. These transcripts also show that appellants entered into an installment agreement with the IRS on October 4, 2017.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to report federal changes to a return and either concede the accuracy of the federal changes to the taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that respondent's determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing that respondent's determinations are incorrect, such determinations must be upheld. (*Appeal of*

Seltzer (80-SBE-154) 1980 WL 5068.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

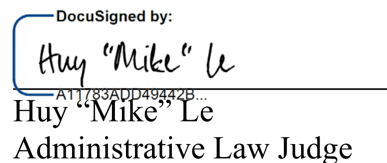
Appellants have submitted no substantive evidence to show that respondent's proposed assessments based on federal determinations are in error. Appellants also have not provided evidence of any adjustment to the federal determinations.[1] Accordingly, we find that appellants have not met their burden of proving error in respondent's proposed assessments, or in the federal determinations upon which respondent based its proposed assessments.

HOLDING

Appellants have not established error in the proposed assessments for the 2014 and 2015 tax years, which are based on federal adjustments.

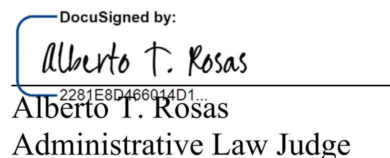
DISPOSITION

Respondent's actions are sustained.



Huy "Mike" Le
Administrative Law Judge

We concur:



Alberto T. Rosas
Administrative Law Judge

Nguyen Dang
Administrative Law Judge

Date Issued: 8/18/2020

[1] Office of Tax Appeals previously granted two deferrals: one from the date of appellants' August 13, 2019 appeal until October 4, 2019; and another from October 4, 2019, until December 9, 2019. Since then, appellants have not requested an additional deferral. While appellants assert they are in the process of appealing the IRS's proposed adjustments through the IRS Taxpayer Advocate, appellants' 2014 and 2015 federal transcripts show the IRS closed its examination, assessed additional tax (which is considered a final federal determination for California purposes and reportable to respondent under R&TC section 18622(d)), and entered into an installment agreement with appellants. The federal transcripts, therefore, do not show that the IRS cancelled or revised its determinations. Furthermore, appellants have not established that the IRS is currently examining their 2014 and 2015 tax returns or that the federal determinations are not final.