

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. LAFFOON

) OTA Case No. 18083609
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OPINION

Representing the Parties:

For Appellant: A. Laffoon¹

For Respondent: David Muradyan, Tax Counsel III

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Laffoon (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund for her 2011 tax year.

Appellant waived her right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellant has established that she is entitled to a refund of the payments made with respect to her 2011 tax year, and if so, in what amount.

FACTUAL FINDINGS

1. Appellant filed her California resident income tax return for 2011 on December 12, 2012, approximately eight months late. On it, she reported a California tax liability, after exemption credit, of \$1,586. After application of appellant’s withholding credits, she owed \$100 in tax, which was not paid with the return. FTB assessed a \$100 late-filing penalty pursuant to R&TC section 19131(b).

¹The Tax Appeals Assistance Program entered an appearance for appellant but did not submit any briefs or argument on her behalf.

2. The IRS audited appellant's 2011 federal income tax return and proposed adjustments that increased her income by \$74,566 (for unreported pension/annuity income of \$74,532 and unreported interest income of \$34). Those proposed federal adjustments became final, and the IRS assessed additional tax based upon them.
3. The IRS informed FTB of the adjustments it made to appellant's 2011 tax liability. Based on that information, FTB issued a Notice of Proposed Assessment (NPA) on May 14, 2015, proposing to increase appellant's income by \$74,566, and to allow an additional tax withholding credit of \$1,490. The NPA proposed to assess additional tax of \$5,363 and an additional late-filing penalty of \$1,265.75.
4. On June 1, 2015 (before the NPA became a final assessment), appellant submitted an amended 2011 California return to FTB. FTB did not treat the amended return as a valid protest, nor did it accept the amended return as filed. Instead, FTB wrote to appellant on March 7, 2016, informing her that it would not accept the return as filed because the amounts reported thereon did not correspond to her income as determined by the IRS. However, FTB did conduct a further review of appellant's federal tax information and allowed the itemized deductions claimed on her federal return to the extent those deductions were allowed by the IRS and allowable under California law. This resulted in FTB allowing \$41,063 of the \$50,029 of itemized deductions claimed on appellant's federal return. Based on this adjustment (and the allowance of the additional withholding credit mentioned above), FTB reduced its proposed tax deficiency from \$5,363 to \$1,891 and the proposed additional late-filing penalty from \$1,265.75 to \$497.75.
5. During the period from September 1, 2015, through November 24, 2017, appellant paid the reduced balance determined to be due, including interest, penalty, and installment agreement fees, except for a small amount, \$93.58, that FTB wrote off.
6. Although we do not have a copy of appellant's refund claim in the record, the parties agree that one was filed. FTB issued a letter to appellant dated April 23, 2018, denying her refund claim.
7. Appellant timely filed this appeal from FTB's claim denial letter. In her appeal letter, appellant states, in pertinent part, as follows:

Originally, I claimed interest on a property and since the IRS did not accept it at the time, I was only told by the FTB that they could not accept it either and I had been assessed and would have to pay. ...

According to the documentation sent to me by the FTB, I paid a total of \$3,505.72 (possibly more), I was only refunded \$933.02, so there is a balance of \$2572.70 unaccounted for. ...

I made several payments, ... including a tax refund. I had a difficult time budgeting the money to make those payments. To make all of those payments then to get shorted is not right. I would appreciate the return of all of the money I paid but did not really have to pay because I was correct in claiming the interest on the property I owned previously.

8. In its opening brief, FTB addressed whether appellant is entitled to *any* refund on account of the disallowed deductions that were claimed on appellant's amended California income tax return, and whether appellant has overpaid the amount she owed for 2011. FTB concluded that the proposed tax deficiency should be reduced by \$9 and the proposed late-filing penalty by \$2.25, but that appellant was not entitled to a refund because the reduced tax and penalty amounts are less than the amount of the write-off in appellant's 2011 tax account.
9. Appellant did not file a reply to FTB's opening brief.

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. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.)

The parties have not provided us with a copy of appellant's refund claim. But based upon the allegations in appellant's appeal letter and amended return, she does not appear to dispute the IRS adjustments upon which FTB's determination was based.² In fact, the amended California return incorporated the IRS's adjustments to her pension/annuity income and her interest income. However, the amended return did not take into account the IRS's reduction to

² Even if appellant had contested the IRS adjustment, she failed to provide any information showing that it was incorrect.

appellant's itemized deductions (from \$50,029 to \$44,623), nor did it take into account the fact that the itemized deduction claimed on her federal return for state income tax (of \$3,560) is not allowable for California tax purposes.

Instead, appellant alleges that “there is a balance of \$2,572.70 [she paid that is] unaccounted for.” In response, FTB provided us with an analysis and supporting documentation explaining its tax computation and accounting for appellant's payments. FTB's submission supports its current position that there was a tax deficiency of \$1,882 in appellant's 2011 tax account (significantly less than the \$5,363 originally determined in FTB's NPA) and that appellant was liable for a late-filing penalty in the amount of \$495.50 (also significantly less than the penalty amount originally proposed by FTB). Appellant has not shown any error in FTB's revised determination or computation.

Nevertheless, in its review of appellant's 2011 tax account, FTB discovered a \$13.59 error in its tax computation, and it will adjust appellant's account to reflect a \$9 reduction in tax, a \$2.25 reduction in the penalty, and a \$2.34 reduction in interest due on those amounts. However, these minor adjustments will *not* generate a refund to appellant of those amounts because FTB previously had written off \$93.58 of the amount appellant owed for 2011. The \$13.59 reduction in tax and penalties agreed to by respondent simply will reduce the amount of FTB's write-off by \$13.59. Because these minor adjustments will not result in a credit balance in appellant's 2011 tax account, she will not be entitled to any refund for 2011.

HOLDING

Appellant is not entitled to any refund of the amounts paid with respect to her 2011 tax liability.

DISPOSITION

FTB’s denial of appellant’s claim for refund for 2011 is sustained.

DocuSigned by:
Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:
Alberto T. Rosas
B969EE4554914D5...
Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Kenneth Gast
4283B8CD4CF34BC...
Kenneth Gast
Administrative Law Judge

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