

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. LOCKHART

) OTA Case No. 19105312
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OPINION

Representing the Parties:

For Appellant: Ileana Polis, Tax Appeals Assistance Program
For Respondent: Angelina Yermolich, Legal Assistant¹

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Lockhart (appellant) appeals an action by the respondent Franchise Tax Board (FTB) in proposing \$1,353 of additional tax, and applicable interest, for the 2015 tax year.

Appellant waived her 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 for 2015, which is based on federal adjustments.

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return (540) for 2015, which was based upon the income and deductions she reported on her federal return.
2. FTB received information from the Internal Revenue Service (IRS), showing that the IRS had increased the amount of income reportable on appellant’s federal return for 2015 on

¹ Freddie C. Cauton, Legal Analyst, filed FTB’s opening brief. Angelina Yermolich, Legal Assistant, filed FTB’s additional brief.

- account of: (i) an unreported \$25,000 taxable pension/annuity distribution appellant received from Morgan Stanley; and (2) a disallowance of \$368 of miscellaneous itemized deductions because, after the \$25,000 increase to her adjusted gross income (AGI), her miscellaneous itemized deductions no longer exceeded 2 percent of her AGI.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that applied the IRS income adjustments to appellant's 2015 California tax return. The NPA increased appellant's income by \$25,368 (consistent with the IRS adjustments) and proposed additional tax of \$1,353, plus interest.
 4. FTB subsequently issued a Notice of Action which affirmed the NPA.
 5. This timely appeal followed.

DISCUSSION

When the IRS makes changes or corrections to an individual's tax return and the changes increase the amount of California tax owed, the taxpayer must report the federal changes and either concede the accuracy of the federal determination or prove that the federal adjustments are erroneous. (RTC, § 18622(a).) An FTB deficiency assessment that is based on a federal audit report is presumed to be correct and appellant 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 with respect to an assessment based on a federal action. (*Ibid.*)

FTB obtained information from the IRS which showed that adjustments were made to appellant's 2015 federal return for \$25,000 of unreported pension/annuity income and \$368 of disallowed miscellaneous itemized deductions. The IRS information showed that the federal adjustments were not revised or cancelled and are final. Based on the federal information, FTB issued an NPA to make corresponding adjustments to appellant's California taxable income.²

On appeal, appellant asserts that she resolved the matter with the IRS, that the IRS did not tell her that her income was being increased on account of pension/annuity income, and that she does not remember receiving a Form 1099-R reporting she received \$25,000 of taxable pension/annuity income. However, appellant attached to her reply brief a document from

² California law generally conforms to federal law as to the taxation of pension/annuity income. (See generally R&TC, § 17085 [conforming to Internal Revenue Code section 72, and requiring inclusion in income of gross amounts received from annuities, including retirement plan distributions].)

Morgan Stanley showing she received a \$25,000 disbursement from her retirement account in 2015. Appellant also produced a copy of her IRS account transcript, which confirms that the IRS assessed a tax deficiency of \$6,350 for 2015 that appellant has paid in full (in part by making an additional payment; in part through federal withholding of \$4,000 on the \$25,000 disbursement, which was not previously reported by appellant on her original federal return).³ Although appellant's evidence establishes that she no longer has a balance due for her federal liability for the 2015 tax year, she has not established error in the federal determination, or in the proposed state tax liability that is based thereon.

HOLDING

Appellant has not shown error in FTB's proposed assessment for 2015, which was based on federal adjustments.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Natasha Ralston
DE5900E56F040F...
Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
John O Johnson
873D879799E64E1...
John O. Johnson
Administrative Law Judge

DocuSigned by:
Jeffrey I. Margolis
477BAD28C0B2437...
Jeffrey I. Margolis
Administrative Law Judge

Date Issued: 4/2/2021

³ We note appellant also received an additional \$1,000 withholding tax credit on the corrected California income tax return, submitted by FTB.