

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20025874
G. BONHAM)
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OPINION

Representing the Parties:

For Appellant: G. Bonham

For Respondent: Rachel Abston, Senior Legal Analyst

E. S. EWING, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant G. Bonham appeals respondent Franchise Tax Board’s (FTB) action proposing an assessment of additional tax of \$1,708, plus interest, for tax year 2015. Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Did appellant establish error in FTB’s proposed assessment for tax year 2015, which is based on a final federal determination?

FACTUAL FINDINGS

1. Appellant timely filed a 2015 California personal income tax return.
2. The Internal Revenue Service (IRS) examined appellant’s 2015 federal tax return and increased appellant’s income based on unreported pension/annuities of \$22,167. The IRS assessed additional tax due, plus a 10 percent premature distribution tax of \$2,217. Appellant did not report these federal changes to FTB.
3. The IRS later informed FTB of the federal adjustments. As a result, FTB issued a Notice of Proposed Assessment (NPA) that increased appellant’s income by the \$22,167 and proposed additional tax of \$1,708, plus interest, which included a 2.5 percent premature distribution tax of \$554.

4. Appellant protested the NPA. At the conclusion of the protest, FTB issued a Notice of Action affirming the NPA.
5. Appellant timely filed this appeal.

DISCUSSION

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state.” R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as “all income from whatever source derived,” including pension and annuity income. (IRC, § 61(a)(9), (11).) Further, R&TC section 17501 incorporates IRC section 408(d), which includes in gross income any pension distribution income. Therefore, California’s conformity to IRC sections 61 and 408(d) generally requires that residents of this state who receive distributions from a retirement plan must include these amounts in gross income for California purposes.

When the IRS changes a taxpayer’s income, the taxpayer must report those changes to FTB. (R&TC, § 18622.) A taxpayer must either concede the accuracy of federal changes to a taxpayer’s income or state where the changes are erroneous. (R&TC, § 18622(a).) Under well-settled law, there is a presumption of correctness when FTB bases its deficiency assessment on a final federal determination, and a taxpayer bears the burden of proving FTB’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); *Appeal of Estate of Gillespie*, 2018-OTA-052P.)

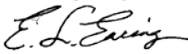
In the instant appeal, appellant argues that, in addition to receiving a refund for tax year 2015, various communications with FTB led appellant to believe all taxes for tax year 2015 had been paid in full. However, appellant does not dispute that the federal determination became final, nor that the underlying assessment by the IRS was proper. Appellant did not report the changes the IRS made to appellant’s income to FTB, as required by R&TC section 18622, nor did appellant submit any evidence that shows error in either FTB’s proposed assessment or the final federal determination on which it is based. (See R&TC, § 18622(a).) Additionally, appellant provided no evidence that the IRS canceled or reduced the final federal determination. Therefore, appellant did not prove that FTB’s proposed assessment, based on a final federal determination, is erroneous.

HOLDING


Appellant did not establish error in FTB’s proposed assessment for tax year 2015, which is based on a final federal determination.

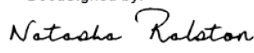
DISPOSITION

We sustain FTB’s action in full.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:

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Administrative Law Judge

DocuSigned by:

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Natasha Ralston
Administrative Law Judge

Date Issued: 11/12/2020