

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20106845  
E. DEAN III AND )  
R. DEAN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Robert M. Bernard, CPA

For Respondent: Melisa Recendez, Legal Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, E. Dean III and R. Dean (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$805 of additional tax, plus applicable interest, for the 2016 taxable year.

Appellants waived their rights to an oral hearing; therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellants have shown that FTB’s proposed assessment, which is based on an Internal Revenue Service (IRS) audit, was erroneous.

**FACTUAL FINDINGS**

1. Appellants filed joint federal (Form 1040) and California (Form 540) income tax returns for the 2016 taxable year.
2. Each appellant received a form 1099-C, for cancellation of debt income (CODI), from Discover Bank (Discover). Only appellant E. Dean III reported his CODI on appellants’ 2016 federal and California income tax returns.
3. Appellants’ 2016 Form 1040 was examined by the IRS. The IRS determined that appellant R. Dean omitted her CODI from appellants’ 2016 Form 1040, and made the

appropriate adjustments. The IRS adjustments went final, and appellants paid the resulting deficiency.

4. FTB received information from the IRS regarding the 2016 federal change, and made corresponding adjustments to appellants' 2016 Form 540, increasing their taxable income by appellant R. Dean's omitted CODI.
5. Appellants protested the adjustment, which FTB subsequently affirmed.

#### DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) A deficiency determination based on a federal audit is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930; see also *Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

R&TC section 17041(a) 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 CODI. (IRC, § 61(a)(12).)

Here, FTB followed the adjustments from the 2016 IRS audit when it adjusted appellants' 2016 California tax liability. When appellants presented FTB with a copy of their 2016 Form 540, contending that they already reported their CODI from Discover, FTB produced federal tax transcripts showing that appellants received two separate Forms 1099-C from Discover, one for each spouse. The record shows that only appellant E. Dean III's CODI was reported on appellants' 2016 tax returns, but not appellant R. Dean's CODI. These transcripts also reveal that, after appellants paid their federal assessments, no further relevant changes were made to their 2016 account by the IRS. Therefore, FTB made the proper adjustment to appellants' 2016 Form 540 based on the IRS information it received.

HOLDING

Appellants failed to show that FTB’s adjustment was erroneous.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Tommy Leung*  
OC90542BE88D4E7...  
Tommy Leung  
Administrative Law Judge

We concur:

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

DocuSigned by:  
*Sheriene Anne Ridenour*  
67F043D83EF547C...  
Sheriene A. Ridenour  
Administrative Law Judge

Date Issued: 4/28/2021