

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20066279
Y. GREENSPAN AND)
T. VAGO)
_____)

OPINION

Representing the Parties:

For Appellants: Y. Greenspan

For Respondent: Rachel Abston, Senior Legal Analyst

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Y. Greenspan and T. Vago (appellants) appeal from a notice of action issued by respondent Franchise Tax Board (FTB) proposing \$1,803 of additional tax, plus applicable interest, for appellants’ 2016 tax year.

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

ISSUE

Whether appellants sustained their burden of proving that FTB erred in adjusting appellants’ income to take into account a federal change to their 2016 taxable income.

FACTUAL FINDINGS

1. Appellants (husband and wife) timely filed a joint California income tax return for 2016. On that return, appellants reported their federal adjusted gross income (AGI) for 2016 as \$74,457. They attached to that return a copy of their 2016 federal income tax return, which also reflects their federal AGI as \$74,457.
2. FTB received information from the IRS, reflected on an FTB CP2000 Taxpayer Data Sheet, indicating that the IRS had increased appellants’ 2016 income from the amount

- reported on their originally filed return by \$25,346, on account of “Schedule D/capital gains dividends” of \$2,517, securities proceeds of \$21,829, and “taxable dividends” of \$1,000.
3. Based on the foregoing information, on November 14, 2019, FTB issued a Notice of Proposed Assessment (NPA) proposing a deficiency in appellants’ 2016 California income tax liability of \$1,803, plus applicable interest.
 4. On December 8, 2019, appellants filed a protest from the NPA with FTB, requesting that FTB provide them with the information upon which FTB based its deficiency determination.
 5. FTB responded by letter dated March 13, 2020, stating that its deficiency determination was based on the following: “Information we recently received from the IRS show[ing] your accepted federal adjusted gross income (AGI) is \$99,803.00. The amount reported as federal AGI on your original state income tax return was \$74,457.00. Therefore, we issued our notice for the difference of \$25,346.” The notice further requested that appellants contact the IRS “to resolve the issues” if they believed the information the IRS reported to FTB was incorrect.
 6. On May 22, 2020, FTB issued a Notice of Action (NOA) to appellants that upheld the proposed \$1,803 tax deficiency.
 7. Appellants timely filed this appeal from the NOA.
 8. On appeal, appellants submitted two documents from the IRS, one titled “tax return transcript” and the other a “record of account,” both relating to appellants’ 2016 tax year. The tax return transcript reflects the AGI amount shown on appellants’ 2016 federal income *as originally filed*. It shows that appellants’ reported AGI of \$74,457 on their return. The record of account reflects both the *corrected* amount of appellants’ AGI (\$99,803) *and* the initially reported amount (\$74,457).
 9. FTB attached to its opening brief the following documents (among others):
 - a. A copy of the 2016 CP2000 report (summarized above) upon which FTB based its notices.
 - b. A copy of an IRS Wage and Income Transcript relating to appellant-wife for 2016. This transcript is a computer printout reflecting information compiled by the IRS

- from the following forms that it received regarding appellant-wife's 2016 income: IRS Forms W-2, 5498, 1099-B, 1099-DIV, and 1099-INT.
- c. A copy of an IRS Wage and Income Transcript relating to appellant-husband for 2016. This transcript is a computer printout reflecting information compiled by the IRS from the following forms that it received regarding appellant-husband's 2016 income: IRS Forms W-2, 5498, 1099-DIV, 1099-INT, and 1099-MISC.
 - d. A copy of an IRS account transcript relative to appellants' 2016 tax year. The account transcript reflects the amount of appellants' federal AGI—after adjustment by the IRS—as being \$99,803. The account transcript also reflects transactions that occurred in appellants' 2016 federal tax account. Notably, the account transcript shows an entry dated May 19, 2018, entitled “review of unreported income,” and an entry dated May 21, 2018, for “additional tax assessed” of \$188. The transcript indicates that appellants paid the additional federal tax assessment.

DISCUSSION

R&TC section 18622(a) requires that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. An FTB proposed deficiency assessment that is based on a federal audit is rebuttably presumed to be correct, and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Gorin*, 2020-OTA-018P; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Taxpayers can satisfy that burden of proof in one of two ways. They can either show that: (i) the IRS changed or eliminated its adjustments; or (ii) the IRS adjustments are incorrect or are not applicable for California tax purposes. (See R&TC, § 18622(a).)

In this appeal, FTB has produced evidence showing the IRS made a final federal change to appellants' 2016 income. It has produced a CP2000 report, IRS wage and income statements, and an IRS account transcript for 2016, showing the IRS increased appellants' federal AGI by \$25,346. The CP2000 report states that the increase was on account of “Schedule D/capital gains dividends” of \$2,517, securities proceeds of \$21,829, and “taxable dividends” of \$1,000. The IRS action resulted in a final federal tax deficiency assessment of \$188, which appellants paid.

In response to FTB's proposed assessment, appellants asked FTB for the IRS information underlying FTB's determination. FTB produced that documentation to appellants during the

process of this appeal. It produced the CP2000 printout, together with IRS wage and income transcripts that contain the Form 1099 information reflecting the unreported income that was the basis for the IRS's income adjustment.

The Form 1099 information contained in the IRS wage and income transcripts shows that appellants received significant distributions of capital gains and other taxable proceeds (dividends and interest) that were not included in the income appellants reported on their return, and identifies the payors of those amounts as well as appellants' basis in the amounts distributed—to the extent that the basis information was known to the payors. Appellants have not contested the accuracy of the Forms 1099, or the basis amounts reflected therein; they did not file a reply to the FTB's opening brief that contained the Form 1099 information.

Instead, appellants claim that the IRS only made “a small, minor adjustment,” and they dispute that the IRS increased their AGI for 2016 to \$99,803. Appellants attached an IRS document titled a “record of account” as the basis for their allegations. The record of account confirms that the IRS only increased appellants' 2016 federal income tax liability by a small amount, just \$188. But it does not confirm appellants' allegation concerning their AGI. The first page of the record of account indicates that appellants' federal AGI for 2016 was \$99,803. That figure appears to be the final corrected AGI amount as determined by the IRS.

Appellants point to a lower AGI figure, \$74,457, that is set forth on page 3 of the record of account, and claim that this was the amount of federal AGI determined by the IRS upon audit. However, on the page of the transcript that precedes this figure, the record of account states: “The following items reflect the amount as shown on the return (PR), and the amount as adjusted (PC), if applicable. They do not show subsequent activity on the account.”¹

FTB acknowledges that the IRS adjustment only resulted in a small increase in appellants' federal income tax liability but contends that the IRS's records confirm that IRS increased appellants' federal AGI and taxable income by \$25,346.² FTB has produced an IRS

¹ We interpret this statement to mean that the entries that follow this disclosure reflect the amounts reported on the original return, plus possible mathematical adjustments that were made when the return was processed by the IRS; they do *not* include audit adjustments.

² The \$188 federal tax deficiency *is* surprisingly small for omitted income of \$25,346. Neither party has satisfactorily explained why the federal deficiency was approximately one-tenth the amount of the proposed California deficiency (typically federal tax deficiencies are several times higher than California deficiencies), although FTB posits that it may be because some of the omitted income consisted of qualified dividends that are taxed at reduced rates for federal tax purposes but not for California tax purposes.

account transcript relative to appellants' 2016 tax year. This account transcript is identical to the first portion of the record of account provided by appellants. As noted above, it shows the IRS determined that appellant's federal AGI, as corrected upon audit, was \$99,803.

We conclude that FTB has correctly interpreted the IRS records and that the IRS did, in fact, increase appellants' income by \$25,346, to the amount that was the basis for FTB's deficiency determination. Although the record of account appellants rely upon reflects two different figures for appellants' AGI, we believe that the AGI number at the beginning of this document reflects appellants' AGI after audit by the IRS, and that the lower AGI figure that appears later in the document reflects the amount shown on appellants' original return, before the IRS audit adjustment. Our conclusion is buttressed by the fact that FTB has provided us with Form 1099 information showing numerous taxable distributions of gross proceeds to appellants that were not included in income on their return. Appellants have not contested that these amounts constituted income to them, nor have they attempted to show that they had additional basis in the amounts distributed to reduce the gain reflected on the Forms 1099. Accordingly, we sustain FTB's determination in full.

HOLDING

Appellants have not sustained their burden of establishing error in FTB’s deficiency determination, which is based on a final federal adjustment.

DISPOSITION

FTB’s determination is sustained in full.

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

We concur:

DocuSigned by:
Amanda Vassigh
Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
Huy "Mike" Le
Administrative Law Judge

Date Issued: 4/29/2021