

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. WEBB

) OTA Case No. 20116979
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OPINION

Representing the Parties:

For Appellant:

P. Webb

For Respondent:

Joel M. Smith, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Webb (appellant) appeals an action by the Franchise Tax Board (respondent) proposing \$866 of additional tax and applicable interest for the 2015 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established error in respondent’s proposed assessment for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely 2015 California income tax return. As relevant here, appellant claimed a California subtraction of \$11,362 on her return for pensions and annuities, which reduced her California taxable income.
2. Subsequently, respondent examined appellant’s California income tax return and disallowed her claimed subtraction of \$11,362. As a result of the disallowance, respondent proposed additional tax of \$866 plus applicable interest.
3. Respondent notified appellant of the proposed additional tax by Notice of Proposed Assessment (NPA) dated November 12, 2019.

4. Appellant made a payment of \$972.21 on December 2, 2019, for the disputed tax amount plus interest.
5. By letter dated January 6, 2020, appellant protested the NPA.
6. On August 9, 2020, respondent erroneously refunded appellant's payment instead of holding the payment as a tax deposit to prevent the accrual of additional interest as provided in R&TC section 19041.5.¹
7. Respondent issued a Notice of Action affirming the NPA.
8. This timely appeal followed.

DISCUSSION

Respondent's determination is presumed correct, and a taxpayer has the burden of proving error. (*Appeal of Morosky*, 2019-OTA-312P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P.) In the absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Ibid.*)

R&TC section 17041(a) imposes a tax "upon the entire taxable income of every resident of this state." R&TC section 17071 incorporates IRC section 61, which defines "gross income" as "all income from whatever source derived," including pensions and annuities. (IRC, § 61(a)(8), (10).)

There is no dispute that appellant was a California resident for the 2015 tax year. As a result, all of appellant's income was subject to California income tax, which included appellant's pension income. Thus, respondent's disallowance of appellant's claimed subtraction of pension income is presumed correct. The burden is on appellant to show error in respondent's determination.

On appeal, appellant argues that she experienced substantial frustration in trying to resolve her 2015 tax liability with respondent. Appellant states that she paid the proposed assessment, received a refund of the payment, and was told that she only had a very small

¹ California generally conforms to the federal tax deposit provisions in Internal Revenue Code (IRC) section 6603. (See R&TC, § 19041.5(a).) Any payment made to stop the running of interest on a proposed deficiency assessment that has not become final is regarded as a "tax deposit" that stops the accrual of interest. (IRC, § 6603(b).) On November 24, 2020, appellant made a second tax deposit for the tax and applicable interest. This tax deposit will be applied when the liability is final. (See R&TC, § 19041.5(a)(2).) In addition, respondent concedes that it will abate interest from the date when appellant first paid the balance due on December 2, 2019.

liability remaining. Appellant then states that she was later informed by respondent that she once again owed the amount which she previously paid and was refunded to her during the protest. In addition, appellant explains that she was unable to reach anyone at respondent's offices to provide her with an explanation of her account status on multiple occasions. Based solely on this argument, appellant is disputing the entire liability.

Although appellant may have been frustrated with the protest process, appellant has not brought forth any arguments that would demonstrate that respondent's proposed assessment is erroneous. For example, appellant has not explained why the pension income at issue in this appeal should be excluded from appellant's California taxable income. Furthermore, the Office of Tax Appeals lacks jurisdiction to determine whether appellant is entitled to a remedy for respondent's actual or alleged violation of any substantive and procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. (See Cal. Code Regs., tit. 18, § 30104(d).) Appellant's frustration and respondent's handling of the protest do not affect the adequacy of the NPA, the validity of the action, or the amount at issue in this appeal. Therefore, we find that appellant has not met her burden of proof.

HOLDING

Appellant has not established an error in respondent’s proposed assessment for the 2015 tax year.

DISPOSITION

As conceded by respondent, the amount of interest paid after December 2, 2019, shall be abated (*ante*, fn. 1); otherwise, respondent’s action in denying appellant’s protest is sustained.

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Andrew Wong
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Andrew Wong
Administrative Law Judge

Date Issued: 6/23/2021