

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19085115
G. TANG)
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OPINION

Representing the Parties:

For Appellant: G. Tang

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Tang (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund for the 2012 taxable year.

Appellant waived his right to an oral hearing, and we decide the matter based on the written record.

ISSUE

Has appellant shown that further adjustments are warranted to FTB’s revised California tax computation, which is based on information provided by the Internal Revenue Service (IRS)?

FACTUAL FINDINGS

1. Appellant’s 2012 federal income tax return (Form 1040) was examined by the IRS. Initially, the IRS revised appellant’s income to include unreported interest, dividend, and securities related income.
2. After this IRS revision, FTB issued a Notice of Proposed Assessment (NPA) making corresponding adjustments to appellant’s 2012 California resident income tax return (Form 540A), which appellant protested.

3. Appellant paid the proposed assessment in full, converting the protest to a claim for refund, which FTB denied.
4. Upon further examination during this appeal, the IRS ultimately determined that the overwhelming majority of appellant's unreported income was not taxable. Accordingly, the IRS made a second set of revisions to appellant's 2012 Form 1040. FTB again made corresponding adjustments to appellant's 2012 Form 540A which reduced appellant's California tax to \$135.¹ After applying a lien fee of \$23 and interest of \$23.72, this led to a partial denied claim of \$181.72, and a resulting overpayment of \$310,456.59.²

DISCUSSION

A taxpayer is required to concede the accuracy of a federal determination or state where the determination is erroneous. (R&TC, § 18622(a).) A proposed assessment based on a federal determination is presumed correct, and a taxpayer bears the burden of proving otherwise. (*Appeal of Gorin*, 2020-OTA-018P.) The taxpayer may rebut the presumption of correctness with credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Morosky*, 2019-OTA-319P; *Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

In his appeal letter, appellant stated that the IRS was in the process of reevaluating its determination. The IRS did revise its determination after the filing of this appeal, and FTB made corresponding revisions to appellant's California tax, reducing it to \$135, plus fees and interest. After appellant failed to respond to our request to address FTB's revisions with new arguments or evidence, we have no choice but to find that additional adjustments are not warranted.

¹ OTA sought to hold a conference with the parties regarding this remaining amount, but staff's attempts to contact appellant by mail and telephone were unsuccessful.

² FTB states that it will refund this amount to appellant upon the conclusion of this appeal.

HOLDING

Appellant has failed to show that additional adjustments are warranted.

DISPOSITION

FTB’s action, as revised in accordance with the IRS’s re-examination resulting in a \$310,456.59 California overpayment plus interest, is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
77AFD3EA552843B...
Nguyen Dang
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

Date Issued: 6/30/2021