

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19105337  
H. CHUNG AND )  
Y. CHUNG )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: H. Chung

For Respondent: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Michelle Huh, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, H. Chung and Y. Chung (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$11,875, plus applicable interest, for the 2015 tax year.

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

**ISSUE**

Whether appellants have established error in FTB’s proposed assessment of additional tax, which is based on adjustments made by the Internal Revenue Service (IRS).

**FACTUAL FINDINGS**

1. Appellants timely filed a joint 2015 California tax return (Form 540) reporting federal adjusted gross income (AGI) of \$35,548 and a taxable income of \$5,659.
2. Subsequently, the IRS provided information to FTB of adjustments made to appellants’ federal account for the 2015 tax year. The IRS increased appellants’ federal AGI from \$35,548 to \$239,719. The IRS also disallowed claimed medical deductions.

3. Based on the IRS information, FTB made corresponding adjustments to appellants' California taxable income to the extent applicable under California law. FTB issued appellants a Notice of Proposed Assessment (NPA) dated September 21, 2018. The NPA increased appellants' California taxable income from \$5,659 to \$186,643, and proposed an additional tax of \$11,875, plus interest.
4. Appellants protested the NPA. Attached with their protest letter, appellants provided a copy of a letter dated March 23, 2017, addressed to them from their tax accountant, and a copy of their revised 2015 Form 540, signed by appellants on October 10, 2018. The March 23, 2017 letter states that the accountant enclosed the original and duplicate copies of appellants' 2015 federal return (Form 1040) and 2015 Form 540; that the federal balance due is \$22,171; that the state balance due is \$4,529; and that both returns had filing deadlines of April 18, 2016. The revised Form 540 reports a federal AGI of \$163,131, itemized deductions of \$22,717, a California taxable income of \$107,653, and a California tax due of \$4,529.
5. FTB sent a letter to appellants dated July 25, 2019, which acknowledged receipt of appellants' protest letter and their revised Form 540. FTB explained that it was unable to process their revised Form 540 because it recently received information from the IRS showing details of the federal adjustments made for the 2015 tax year; the information does not show that its assessment was cancelled or reduced; and the NPA is correctly based on the federal adjustments reflected in the attached copy of appellants' 2015 CP2000 Taxpayer Data Sheet. FTB also stated that it would affirm the NPA if appellants did not provide a revised IRS report or any additional information by August 26, 2019.
6. After appellants did not respond to its July 25, 2019 letter, FTB sent a Notice of Action to appellants dated September 13, 2019, affirming the NPA.
7. This timely appeal followed. With their appeal letter, appellants provided a copy of the same 2015 Form 540 that they attached to their protest letter. They also attached a copy of a 2015 Form 1040, which is unsigned but dated March 23, 2017. On the newly submitted copy of the 2015 Form 1040, appellants reported a federal AGI of \$163,131, itemized deductions of \$22,717, a tax of \$22,171, and a balance due of \$22,171.<sup>1</sup>

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<sup>1</sup> This is the same federal balance due amount appellants' tax accountant referenced in the March 23, 2017 letter, which appellants produced at protest without a copy of the 2015 federal return.

8. OTA deferred the appeal to allow the IRS time to review appellants' 2015 amended federal return.
9. FTB produced a copy of appellants' 2015 federal account transcript dated July 6, 2020. The federal account transcript shows that an amended federal return was filed on March 30, 2017; the IRS revised appellants' federal AGI to \$208,886;<sup>2</sup> and the federal assessment became final on August 21, 2017, when the IRS assessed additional tax and imposed a late filing penalty and an accuracy-related penalty, plus interest.<sup>3</sup> The federal account transcript also shows that appellants made numerous payments and paid the 2015 federal tax liability in full as of September 18, 2019. There is no indication on the federal account transcript that the IRS revised, reduced, or withdrew the final federal determination. The federal account transcript has a final entry, additional account action pending (Transaction Code 570), dated October 7, 2019, for zero dollars.

#### DISCUSSION

R&TC section 17041(a)(1) imposes a tax on the entire taxable income of every California resident. R&TC section 18501(a) requires every individual subject to the Personal Income Tax Law to make and file a return with FTB reporting the items of the individual's gross income from all sources and all allowable deductions and credits. The federal definition of AGI found in Internal Revenue Code (IRC) section 62 is incorporated into California law by R&TC section 17072, except as otherwise provided. Accordingly, taxpayers must report the same federal AGI on both their federal and California returns.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that taxpayers bear the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) 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.) Unsupported assertions are not

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<sup>2</sup> Appellants have not provided their federal return or copies of the federal audit determination indicating the specific amounts revised during the federal audit; therefore, FTB did not do its own audit or accept appellants' amended return.

<sup>3</sup> Appellants have not provided information on why the IRS revised the federal AGI.

sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Gorin, supra.*)

Here, FTB's proposed assessment is based on a final federal determination. Appellants' only argument is that their tax accountant recalculated their 2015 state tax, and the amount should be \$4,529. Appellants' 2015 federal transcript shows that the IRS assessed additional tax and imposed a late filing penalty and an accuracy-related penalty, plus interest, on August 21, 2017; and that the final federal determination was not revised, reduced, or withdrawn. The federal account transcript shows that the IRS revised appellants' federal AGI to \$208,886; however, appellants' timely filed 2015 Form 540 showed a federal AGI of \$35,548, and their unfiled revised Form 540 reported a federal AGI of \$163,131. Neither reconcile the revised federal AGI on the federal account transcript. The transcript also shows that appellants made installment payments and paid the full amount of additional tax, penalties, and interest as of September 18, 2019. Although appellants' 2015 federal account transcript contains an inexplicable entry of Transaction Code 570, dated October 7, 2019, for zero dollars, this entry was made after the federal assessment became final and appellants paid the federal tax liability in full. Accordingly, appellants did not prove by a preponderance of the evidence that this entry shows that the 2015 federal determination is subject to a possible revision, reduction, or withdrawal for any reason.

OTA deferred this appeal to allow time for the IRS to review any 2015 amended federal return that appellants may have filed. After appellants failed to produce a copy of a filed 2015 amended federal return, FTB requested that appellants obtain from their tax accountant a complete copy of their 2015 amended federal return that was used to prepare appellants' revised 2015 Form 540. Neither appellants nor their tax preparer produced a complete version of a filed 2015 amended federal tax return, including corresponding schedules or income forms. Appellants were provided an opportunity to file a reply brief but did not do so.

Appellants do not explain or substantiate why the federal assessment is erroneous or why the total California taxable income adjustments of \$180,984 listed in the NPA or the proposed additional tax of \$11,875 is erroneous. We conclude that appellants have not met their burden of proving error in the federal adjustments or in FTB's determination based on those federal adjustments.

HOLDING

Appellants have not established error in FTB’s proposed assessment of additional tax, which is based on adjustments made by the IRS.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Sara A Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Alberto T. Rosas*  
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Alberto T. Rosas  
Administrative Law Judge

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

Date Issued: 6/29/2021