

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20096672
P. LADDIS)
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OPINION

Representing the Parties:

For Appellant: P. Laddis¹

For Respondent: Melisa Recendez, Legal Assistant

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19331, appellant P. Laddis appeals respondent Franchise Tax Board's deemed denial of appellant's claim for refund for tax year 2012. The claim for refund totals \$775.95, which includes additional tax of \$416, plus applicable interest. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Whether appellant established error in respondent's assessment for tax year 2012, which is based on appellant's federal adjusted gross income (AGI).

FACTUAL FINDINGS

1. Appellant filed a timely 2012 California Resident Income Tax Return and reported federal AGI of \$8,692.
2. Respondent received information from the Internal Revenue Service (IRS) indicating that appellant's federal AGI, as accepted by the IRS, was \$29,000.
3. On June 8, 2016, respondent issued a Notice of Proposed Assessment (NPA) for tax year 2012, which increased appellant's federal AGI and California taxable income by \$20,308, and proposed additional tax of \$416, plus applicable interest.

¹ The Tax Appeals Assistance Program previously represented appellant in this matter.

4. The NPA was mailed to an apartment address on Discovery Way in La Jolla, California (Discovery Way Address), which is the same address used on appellant's 2012 and 2016 California returns. Appellant did not protest the NPA,² and the NPA went final.
5. When appellant did not respond to a Notice of State Income Tax Due dated September 6, 2016, respondent sent several collection notices to appellant, initiated collection actions, and sent Orders to Withhold Personal Income Tax to appellant's bank.
6. In October 2017, appellant sent respondent a facsimile copy of appellant's federal Account Transcript for tax year 2012. The transcript shows a federal AGI of \$29,000, which is \$20,308 more than the \$8,692 that appellant reported on the California return.
7. Through its collection efforts, respondent collected the following amounts for tax year 2012: \$86.07 in September 2017, \$255.75 in June 2018, and \$434.13 in July 2018. In June 2019, appellant submitted a letter to respondent, requesting a refund of \$775.95.
8. Because respondent did not act on appellant's claim for refund within six months following the filing of the claim, appellant deemed the refund claim to have been denied and this timely appeal followed.

DISCUSSION

As the California Supreme Court has observed, "California income tax law generally is based upon federal income tax law. [Citation.] State law provides that subject to exceptions, gross income, adjusted gross income, and taxable income for state tax purposes are defined as their equivalents for federal tax purposes." (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 904 [citations].) Except as otherwise provided, California conforms to Internal Revenue Code (IRC) section 62 as to the definition of AGI. (R&TC, § 17072(a).) The California Supreme Court stated that "an increase in the amount of a taxpayer's federal taxable income generally will signify an increase in the amount of his or her state taxable income." (*Ordlock, supra*, 38 Cal.4th at p. 904.) One of the reasons for this is because the amount of federal AGI reported to and accepted by the IRS must match the federal AGI reported on a taxpayer's California return, except as otherwise provided. (R&TC, § 17072(a); see also R&TC, § 18622(a) [requiring a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous].)

² As discussed below, appellant indicates that he did not receive the NPA.

In this case, respondent received information from the IRS indicating that appellant's federal AGI for tax year 2012, as accepted by the IRS, was \$29,000, which is \$20,308 more than the \$8,692 that appellant reported on the California return. Thus, respondent issued an NPA for tax year 2012, which increased appellant's federal AGI and California taxable income by \$20,308 and proposed additional tax of \$416 plus applicable interest. When appellant did not protest the NPA, it went final.

The evidence includes a facsimile copy of appellant's federal Account Transcript for tax year 2012 that was dated October 2017. The transcript also shows federal AGI of \$29,000. Thus, based on the evidence before us, it appears that the 2012 federal AGI was not adjusted or canceled, and it is appellant's burden to show that respondent's assessment is erroneous. As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Appellant has not provided evidence to prove that the federal AGI of \$29,000 was erroneous. Therefore, we find that appellant has not shown by a preponderance of the evidence that his federal AGI is less than the amount reflected in the information that respondent received from the IRS.

Additionally, appellant argues that he did not receive the NPA dated June 8, 2016, and that he was unaware of the withholding order dated August 29, 2017, until notified by his bank. The NPA was mailed to the Discovery Way Address, which is the same address used on appellant's 2012 and 2016 California returns. Respondent argues that this was appellant's last-known address at the time respondent issued the NPA.

The last-known address rule states that notices may be given by first-class mail and are sufficient if mailed to the taxpayer's last-known address. (R&TC, § 18416(a) & (b).) This rule is based on a similar IRC provision. (IRC, § 6212.) Under both the R&TC and the IRC, a taxpayer's last-known address is the one listed on the taxpayer's most recent return, unless the taxpayer communicates a "clear and concise" notice of change of address. (See *United States v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810, cert. denied, 469 U.S. 830; see also *Appeal of Floria* (83-SBE-003) 1983 WL 15390 [taxpayer failed to notify respondent of his new address or take any other steps to ensure he would receive his mail].) Additionally, notices are valid even if not

received by the taxpayer, so long as the notices meet the statutory requirements. (*United States v. Zolla, supra*, 724 F.2d at p. 810; see also *Appeal of Floria, supra*.)

We note that respondent sent some notices and correspondence to incorrect addresses.³ However, our concern is the NPA, which was mailed on June 8, 2016, to the Discovery Way Address. The evidence shows that this was appellant's last-known address of record. Appellant does not dispute or contest this fact. Appellant does not indicate whether his address in June 2016 was different than the Discovery Way Address. Appellant does not indicate whether his 2015 California return used a different address, which, depending on when it was filed, may have established a different last-known address as of the time respondent issued the NPA. Lastly, appellant does not indicate whether he communicated a "clear and concise" notice of change of address.

Thus, based on the case law above, the NPA mailed to appellant's last-known address (i.e., the Discovery Way Address) met the statutory requirements of R&TC section 18416. Therefore, the notice was sufficient and valid even if appellant did not receive it. In addition, as indicated above, appellant has not shown, by a preponderance of the evidence, that his federal AGI is an amount less than \$29,000. Therefore, because the NPA provided sufficient and valid notice, and because appellant did not meet his burden of proof, we find that appellant did not establish error in respondent's assessment for tax year 2012.

³ For example, the Income Tax Due Notice dated October 2016 included the Discovery Way Address but did not include an apartment unit designation. Additionally, in January 2018, respondent mailed its position letter to a residential address on Camino De La Paz in San Ysidro, California, and respondent indicated that the U.S. Postal Service returned this position letter as "Unable to Forward."

HOLDING

Appellant did not establish error in respondent’s assessment for tax year 2012.

DISPOSITION

We sustain respondent’s action in full.

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

We concur:

DocuSigned by:
Keith T. Long
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

DocuSigned by:
Josh Aldrich
48745BB806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 7/1/2021