

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A. GERSTON**

) OTA Case No. 20126998  
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**OPINION**

Representing the Parties:

For Appellant: A. Gerston

For Respondent: Christopher T. Tuttle, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Gerston (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$16,755.00, an accuracy-related penalty of \$1,033.20, and applicable interest, for the 2016 taxable year.

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

**ISSUE**

Has appellant established error in FTB’s proposed assessment, which is based on federal adjustments to appellant’s federal tax liability?

**FACTUAL FINDINGS**

1. Appellant filed a timely 2016 California Resident Income Tax Return, which FTB accepted as filed.
2. Subsequently, the IRS made several adjustments to appellant’s federal return and increased appellant’s adjusted gross income accordingly and imposed the federal accuracy-related penalty.
3. Appellant did not report the changes to FTB. The IRS reported the federal adjustments to FTB. FTB issued a Notice of Proposed Assessment (NPA) to appellant, which reflected

the federal adjustments and proposed additional tax of \$16,755.00 and an accuracy-related penalty of \$1,033.20.

4. Appellant's federal Account Transcript does not reflect that the IRS canceled or modified its assessment. The document reflects that appellant entered into an installment agreement with the IRS and has made payments accordingly.
5. Appellant protested the NPA, indicating that he wished to enter into a settlement agreement with FTB. Appellant included his settlement proposal in that letter.
6. FTB issued a Notice of Action affirming its NPA.
7. Appellant filed this timely appeal.

### DISCUSSION

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 a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

Here, FTB properly assessed additional tax based on federal adjustments. The evidence reflects that the IRS did not reduce or cancel its assessment. Appellant has provided no evidence or argument indicating there was error in FTB's assessment, and we find none.

Appellant has only argued that he wishes to enter into a payment plan with FTB. The Office of Tax Appeals lacks the authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay.<sup>1</sup> (*Appeal of Robinson*, 2018-OTA-059P.) Our function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*) Therefore, we find no basis for making any adjustment to FTB's proposed assessment.

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<sup>1</sup> Appellant may seek appropriate relief directly from FTB when this appeal is concluded, such as an installment payment plan or an Offer in Compromise. FTB contacts for this purpose were provided to appellant in the letter acknowledging the appeal, dated December 16, 2020.

HOLDING

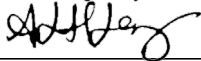
Appellant has not shown error in FTB’s proposed assessment, which is based on federal adjustments.


DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
  
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Huy "Mike" Le  
Administrative Law Judge

Date Issued: 9/20/2021