

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**F. HESS AND**  
**C. HESS**

) OTA Case No. 19125628  
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**OPINION**

Representing the Parties:

For Appellants: F. Hess and C. Hess

For Respondent: Freddie C. Cauton, Legal Analyst

For Office of Tax Appeals: Michael Park, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, F. Hess and C. Hess (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing \$1,166 of additional tax, plus applicable interest, for the 2015 tax year.

Appellants requested an oral hearing. However, after appellants failed to submit the Response to Notice of Oral Hearing by the August 2, 2021 deadline, the oral hearing is deemed waived pursuant to California Code of Regulations, title 18, section 30209; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants have established error in the proposed assessment for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellants filed a timely 2015 California Resident Income Tax Return (Form 540) on April 13, 2016.
2. Subsequently, FTB received information from the IRS, in the form of a CP2000, indicating that the IRS had adjusted appellants’ 2015 federal return by including unreported pension or annuity income of \$14,083 and unreported interest of \$142.

3. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellants' 2015 California return by increasing appellants' California taxable income by \$14,225. The NPA also proposed additional tax of \$1,166, plus applicable interest.
4. Appellants protested the NPA, asserting that they had filed their taxes for 2015, received a refund of \$76, and that the IRS information was based on a matter resolved two years prior. Appellants further stated that they had no way of knowing what the IRS reported to FTB, as it was not explained to them by the NPA.
5. In response, FTB sent a letter acknowledging appellants' protest and explaining FTB's position regarding the NPA—that the NPA adjustments were based on IRS information as authorized by Internal Revenue Code (IRC) section 6103(d). FTB explained that a copy of appellants' 2015 federal Account Transcript, received on September 18, 2019, shows that the original IRS assessment has not been changed and that there is no record of an amended return filed with the IRS. Furthermore, FTB stated that it had no record of the refund of \$76 referred to in appellants' protest.
6. After receiving no further information, FTB issued a Notice of Action (NOA), affirming the NPA.
7. Appellants filed this timely appeal.

### DISCUSSION

A taxpayer must either concede the accuracy of a federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumed to be correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Furthermore, except as otherwise provided, pensions are, by definition, considered to be a source of gross income for California residents. (R&TC, §§ 17071, 17041(a); IRC, § 61.)

There is no dispute that appellants are California residents. Appellants argue that they have no idea what the proposed liability concerns, that the NPA and NOA have not provided sufficient explanation for their understanding, and that they resolved their issues with the IRS regarding their 2015 return in 2018. However, appellants have not presented any argument or evidence that shows error in the federal adjustments or refutes FTB's determination based on

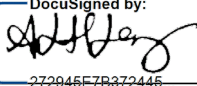
those adjustments. Therefore, we conclude that appellants have failed to meet their burden of proof.

HOLDING


Appellants have not established error in the proposed assessment for the 2015 tax year.

DISPOSITION

FTB’s action is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Huy “Mike” Le  
Administrative Law Judge

DocuSigned by:  
  
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Natasha Ralston  
Administrative Law Judge

Date Issued: 10/5/2021