

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. HALL

) OTA Case No. 21017143
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: A. Hall

For Respondent: Angelina Yermolich, Legal Assistant

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Hall (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$3,971, plus applicable interest, for the 2016 taxable year.

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

ISSUE

Whether appellant has shown error in respondent’s proposed assessment of additional tax, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely California income tax return for the 2016 taxable year.
2. Respondent received information that the IRS made adjustments to appellant’s federal tax return related to an unreported taxable pension distribution of \$41,804 for the 2016 taxable year.¹ This action resulted in an increase to appellant’s federal adjusted gross income. Appellant did not notify respondent of the federal adjustments.

¹ The record includes the federal wage and income transcript received by respondent from the IRS which reflects a taxable pension distribution of \$41,804 paid to appellant during the 2016 taxable year.

3. Based on the information received from the IRS, respondent issued appellant a Notice of Proposed Assessment (NPA). The NPA proposed \$3,971 of additional tax, plus applicable interest.
4. Appellant filed a protest of the NPA. Respondent and appellant exchanged correspondence during the protest, and, at the conclusion of the protest, respondent found that appellant had not shown error in the information received from the IRS, nor in respondent's proposed assessment of additional tax based upon the IRS information. Respondent then issued a Notice of Action affirming the NPA.
5. Appellant filed this timely appeal.
6. On appeal, appellant provides a copy of a check made payable to appellant in the amount of \$33,443.83, asserting that this check represented the previously unreported pension distribution, instead of the \$41,804 distribution indicated in the information respondent received from the IRS.

DISCUSSION

A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Where respondent's proposed assessment is based on a final federal determination, a taxpayer shall either concede the accuracy of the federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances he or she 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.) In the absence of credible, competent, and relevant evidence showing that respondent's determinations are incorrect, such determinations must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.)

In this case, respondent assessed additional tax based on information it received from the IRS following the audit of appellant's federal tax return for the 2016 taxable year. Appellant does not dispute that there was unreported pension income (for both federal and state income tax purposes), and that additional federal and state tax was due to be paid on the distribution. However, appellant does dispute the amount of the reported distribution, asserting that the distribution was \$33,443.83, rather than the \$41,804 as shown in the information respondent received from the IRS. Hence, appellant's argument is that respondent's proposed additional tax,

which is based on the IRS increase to appellant's federal adjusted gross income to take into account the unreported taxable pension distribution, is higher than it should be.

The record contains IRS transcripts showing the amount of the pension distribution in question was \$41,804. The record also includes a copy of a check in the amount of \$33,443.83 that appellant provided at protest and again on appeal. Appellant asserts that this check in the amount of \$33,443.83 is the actual amount of the distribution, and not the \$41,804 as reported in the IRS records. However, we see from the record that the check in the amount of \$33,443.53 reflects the net payment to appellant and not the gross amount of the pension distribution. Indeed, the federal wage and income transcript provided by respondent indicates that federal taxes of \$8,360 were withheld and remitted to the IRS on appellant's behalf. When \$8,360 is added to the check amount of \$33,443.53, the total rounds to the retirement distribution amount reflected in the IRS wage and income transcript (i.e., \$41,804). Appellant is subject to tax on the gross amount of the pension distribution, not the lesser amount that was remitted to appellant, which was net of tax withholding amounts.²

Appellant also asserts that respondent should allow a withholding credit similar to the credit that the IRS provided to appellant. This assertion deals with a credit for federal tax withholding and is a separate matter from any state withholding credit(s) that may be available to appellant. Additionally, to the extent appellant is asserting that state withholdings were also made on this pension distribution, appellant has failed to substantiate this. There is no evidence in the record to indicate that California taxes were withheld from the pension distribution and remitted to respondent.³

In sum, appellant has provided no evidence that the IRS determination that appellant received a retirement distribution of \$41,804 during the 2016 taxable year is erroneous. (See R&TC, § 18622(a).) Appellant has therefore failed to meet the applicable burden of proof to establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. Appellant has provided no evidence to overcome the presumption that respondent's deficiency assessment, which is based on a final federal determination, is correct.

² Section 17041 imposes a tax "upon the entire taxable income of every resident of this state." Section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including pension income.


³ Respondent asserts that it requested that appellant provide proof that state taxes were withheld; however, appellant failed to respond and provide the requested evidence.

HOLDING


Appellant has not shown error in respondent’s proposed assessment of additional tax, which is based on a federal determination.

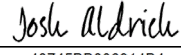
DISPOSITION

Respondent’s action is sustained.

DocuSigned by:

2D8DE92EB65E4A6...
Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:

A14783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

DocuSigned by:

487455B806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 9/23/2021