

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
B. KING

) OTA Case No. 21037422
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OPINION

Representing the Parties:

For Appellant: B. King

For Respondent: Alisa Pinarbasi, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. King (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$564, and applicable interest, for the 2016 tax year.

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Does the evidence establish that respondent’s proposed assessment, which is based on a federal adjustment, is incorrect?

FACTUAL FINDINGS

1. Appellant filed a timely 2016 California Income Tax Return reporting an overpayment.
2. After respondent issued the refund to appellant, the IRS adjusted appellant’s return for unreported wages and medical savings distributions.

3. On December 3, 2019, respondent issued to appellant a Notice of Proposed Assessment of \$564 in tax, plus interest, on the basis of the information received from the IRS concerning the federal adjustment.¹
4. Appellant filed a timely protest, which essentially referred to (and attached) a copy of his federal income tax return and the W-2 for the earnings reported on that return.
5. By letter dated December 17, 2020, respondent explained its position and provided supporting documents to appellant. The letter and documents showed that appellant failed to report a medical savings distribution and taxable wages received from one employer, which income constituted approximately 26 percent of appellant's total income for 2016. The letter instructed appellant to contact the IRS if appellant believed the federal adjustment was incorrect, and to reply to respondent within 30 days to provide information or evidence to show that the proposed assessment was incorrect.
6. On February 17, 2021, respondent issued a Notice of Action affirming the proposed assessment. This appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous, and a deficiency assessment based on a federal adjustment to income is presumed accurate until the taxpayer proves otherwise. (*Appeal of Valenti*, 2021-OTA-093P.) Here, the evidence shows that there was a federal adjustment and that respondent's proposed assessment was accurately based on that federal adjustment. Consequently, we must presume that the proposed assessment is correct until appellant proves otherwise.

Appellant argues that he previously appealed this proposed assessment, that he does not understand why the matter has not been resolved, and that he should not be bothered about it again until the COVID-19 pandemic is over and he is in a better position to pay his bills. At no time during the protest or here on appeal to the Office of Tax Appeals has appellant argued or

¹ Because California does not follow Internal Revenue Code section 223, which allows a federal deduction for health savings account contributions (R&TC, § 17215.4), respondent's proposed assessment flows only from the unreported wages.

shown through evidence that the federal adjustment, upon which respondent based the proposed assessment, is incorrect or that it has been modified by the IRS.

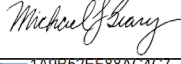
As relevant here, the Office of Tax Appeal's jurisdiction extends to the review of a proposed assessment to determine whether an adjustment is warranted by the evidence. (Cal. Code Regs., tit. 18, § 30103(a).) We do not have the authority to defer action on this appeal or limit respondent's collection practices with respect to appellant's liability pending the end of the pandemic and an improvement in appellant's ability to pay.² Appellant has not argued or shown that the federal adjustment has been modified or is incorrect. Therefore, the presumption of accuracy prevails, and we find no basis for an adjustment.

HOLDING

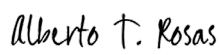
We find that the evidence does not establish that respondent's proposed assessment, which is based on a federal adjustment, is incorrect.

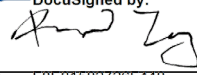
DISPOSITION

We sustain respondent's Notice of Action.

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Michael F. Geary
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

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Richard Tay
Administrative Law Judge

Date Issued: 10/27/2021

² Regarding the implication that appellant is unable to pay the liability at issue, respondent states in its brief that it has internal policies and procedures that allow for compromise and settlement of final accounts and for installment payment arrangements, for which respondent considers ability to pay.