

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19024314
J. KING AND)
C. KING)
_____)

OPINION

Representing the Parties:

For Appellants: J. King
C. King

For Respondent: Rachel Abston, Senior Legal Analyst

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. King and C. King (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$8,667 plus applicable interest, for the 2014 tax year.

We decide the matter based on the written record because appellants waived their right to an oral hearing.

ISSUE

Whether appellants have shown error in respondent’s proposed assessment, which is based on a federal adjustment.

FACTUAL FINDINGS

1. On their joint 2014 California income tax return, appellants reported a federal adjusted gross income consisting of: (1) dividend income; (2) business income; and (3) a self-employment tax deduction.
2. Appellants’ joint 2014 federal income tax return, Schedule C, shows a net profit from appellant C. King’s business matching the amount reported as business income on appellants’ 2014 California income tax return.

3. For the 2014 tax year, appellants also received royalties, a distributive share of long-term capital gain from a partnership roughly four times larger than the net profit from appellant C. King's business, and rental income, all of which the IRS determined were not reported on appellants' 2014 federal income tax return.
4. Consequently, the IRS adjusted appellants' 2014 federal income tax return to include these three unreported items in income.
5. Thereafter, respondent issued to appellants a Notice of Proposed Assessment (NPA) following this federal adjustment.
6. Appellants protested the NPA and respondent issued a Notice of Action affirming its proposed assessment. This timely appeal followed.

DISCUSSION

It is well settled that respondent's deficiency assessments which are based upon a federal adjustment are presumed to be correct and taxpayers bear the burden of proving any error. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellants assert that respondent's proposed assessment results in double taxation of their distributive share of long-term capital gain, because appellants had previously included this item on their 2014 California income tax return as "business income."

However, a review of the amounts reported on appellants' federal and California income tax returns indicates otherwise. Appellants' 2014 California income tax return shows that the amount of appellants' reported business income is roughly four times less than appellants' distributive share of long-term capital gain. In addition, the amount of appellants' reported business income exactly matches the net profit for appellant C. King's business as reported on Schedule C of their 2014 federal income tax return. Because appellants' reported business income consists entirely of income realized from appellant C. King's business, appellants could not have included any portion of their distributive share of long-term capital gain in that amount. Thus, appellants' distributive share of long-term capital gain was not taxed twice.

Accordingly, we find no error in respondent's proposed assessment.

HOLDING

Appellants have not shown error in respondent’s proposed assessment.

DISPOSITION

We sustain respondent’s action.

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Nguyen Dang

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Nguyen Dang

Administrative Law Judge

We concur:

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Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

Date Issued: 11/23/2021