

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

In the Matter of the Appeal of:

**D. SAVIOLA<sup>1</sup>**) OTA Case No. 20127036  
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)**OPINION**

Representing the Parties:

For Appellant:

D. Saviola

For Respondent:

Melisa Recendez, Legal Assistant

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Saviola (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$8,620, an accuracy-related penalty of \$1,724, and applicable interest, for the 2016 tax year.<sup>2</sup>

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

**ISSUE**

Whether appellant has proven error in respondent's proposed assessment of additional tax, which is based upon federal adjustments.

**FACTUAL FINDINGS**

1. Appellant filed a 2016 California Resident Income Tax Return (Form 540). On the return, appellant reported total tax liability of \$19,310, total payments of \$21,411, and an overpayment of \$2,101. Respondent refunded the overpayment.

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<sup>1</sup> Appellant filed a joint return with G. Saviola, who did not sign the appeal letter. References herein referring to actions by appellant that occurred prior to this appeal may also refer to actions by the joint filer.

<sup>2</sup> Appellant does not dispute the accuracy-related penalty. Therefore, we will not mention it further.

2. Subsequently, the IRS sent respondent information that showed the IRS had adjusted appellant's federal tax return due to unreported pension income of \$101,626, among other adjustments.
3. Based on the IRS information, respondent issued a Notice of Proposed Assessment (NPA), increasing appellant's income by \$101,626 and proposed additional tax of \$12,237, among other adjustments.
4. Appellant protested the NPA. In the protest letter, appellant included two Form 1099-Rs. The first Form 1099-R showed \$66,626 in taxable income. The second Form 1099-R showed \$35,000 in nontaxable rollover income. Appellant's protest letter also included an amended return on Form 540X showing, among other items,<sup>3</sup> total tax of \$27,930, total payments of \$21,411, overpaid tax of \$2,101, and tax owed of \$8,620. Appellant's protest letter further included a revised Form 540 that is materially the same as appellant's Form 540X but omitted the refund of \$2,101 and determined the tax owed to be \$6,519.
5. In response to appellant's protest, respondent issued a Notice of Action (NOA) that reduced the unreported pension income to \$66,626 (i.e., \$101,626 - \$35,000) and reduced the amount of tax due to \$8,620, which is consistent with appellant's Form 540X.
6. This timely appeal followed.
7. On appeal, respondent obtained a copy of appellant's 2016 federal account transcript. The transcript shows the IRS revised appellant's adjusted gross income consistent with the information reported on appellant's Form 540X.

#### DISCUSSION

R&TC section 18622(a) states that a taxpayer must 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.)

Under R&TC section 17041(a)(1), California imposes a tax on every California resident's entire taxable income. Gross income includes pension income. (R&TC, § 17071; Internal Revenue Code, § 61(a)(10).)

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<sup>3</sup> To help ensure appellant's privacy, adjusted gross income and taxable income are not listed.

Here, respondent received information from the IRS that appellant failed to report pension income of \$101,626, which the IRS later reduced to \$66,626. Based on this unreported income, respondent issued an NPA with a proposed assessment of additional tax of \$12,237, which respondent later reduced in its NOA to \$8,620.

Appellant argues that respondent should further reduce the proposed assessment of additional tax to \$6,519. However, appellant's calculation is incorrect.

It is undisputed that, after considering the IRS's reduction, appellant's total tax is \$27,930, and total payments before refund is \$21,411. However, unlike appellant's calculation, respondent's calculation also considers the \$2,101 in overpaid tax that appellant claimed on his original tax return and that respondent previously refunded to them.<sup>4</sup> Thus, appellant's total payments must be reduced by \$2,101 to arrive at \$19,310 (i.e., \$21,411 - \$2,101). When \$19,310 is applied against the total tax of \$27,930, the resulting additional tax due is \$8,620—the amount listed on respondent's NOA. Therefore, we find that appellant has failed to show error in respondent's proposed assessment.

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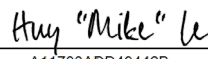
<sup>4</sup> Appellant does not allege that he did not receive this refund.

HOLDING


Appellant has failed to prove error in respondent’s proposed assessment of additional tax, which is based upon federal adjustments.

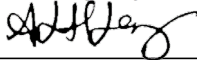
DISPOSITION

We sustain respondent’s action in full.

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Huy "Mike" Le  
Administrative Law Judge

We concur:

DocuSigned by:  
  
0CC6C6ACCG6A44D  
Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
272945E7B370445F  
Andrea L.H. Long  
Administrative Law Judge

Date Issued: 11/10/2021