

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. WILHELM III

) OTA Case No. 21017170
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: R. Wilhelm III

For Respondent: Kristin K. Yeager, Program Specialist

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Wilhelm III (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,109,¹ plus applicable interest for the 2015 tax year.

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

ISSUE

Whether appellant has established error in the proposed assessment for the 2015 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely 2015 California resident return.
2. Subsequently, respondent received information from the IRS, in the form of a CP2000 Data Sheet, indicating that the IRS had adjusted appellant’s 2015 federal return by increasing income to account for previously unreported interest income of \$73,904, dividends of \$915, and partnership income of \$126,992.

¹ Respondent allowed \$7,112 of appellant’s claim for refund of \$10,221, leaving \$3,109 at issue in this appeal.

3. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellant's California return. The NPA proposed additional tax of \$16,507, plus applicable interest.
4. Appellant did not protest the NPA, and it became final.
5. On December 3, 2019, appellant filed an amended California return which reported tax due of \$6,286 and an estimated tax penalty of \$120.² In arriving at the tax due of \$6,286, appellant computed California tax of \$13,398, but reduced this amount by an other state tax credit in the amount of \$7,112.
6. Appellant filed a duplicate of the December 3, 2019, California amended return on January 15, 2020, and made a payment of \$19,259.24.³
7. Respondent treated appellant's amended return as a claim for refund in the amount of \$10,221,⁴ plus applicable interest, which respondent subsequently denied in part.
8. In a letter dated August 4, 2020, respondent explained that the federal Adjusted Gross Income (AGI) appellant stated on the claim for refund was \$13,311 less than appellant's accepted federal AGI. Furthermore, respondent denied appellant's claimed California itemized deductions of \$23,779, and instead allowed the California standard deduction of \$4,044, because appellant claimed the federal standard deduction rather than itemized deductions.⁵ Attached to respondent's August 3, 2020 letter is a revised tax computation, which reflects the tax per the NPA of \$16,507 less the other state tax credit appellant reported on his amended return of \$7,112, for revised total tax of \$9,395.⁶
9. After receiving no response to its August 4, 2020 letter, respondent partially denied appellant's claim for refund in a letter dated January 8, 2021. Respondent allowed

² The \$120 estimated tax penalty reported by appellant on the amended return was subsequently cancelled by respondent.

³ The payment included the \$16,507 of tax proposed in the NPA, the \$120 estimated tax penalty appellant reported on his amended return, and interest of \$2,632.24.

⁴ This amount is computed by subtracting the revised tax of \$6,283 per appellant's amended returns from the proposed additional tax per the NPA of \$16,507 ($\$16,507 - \$6,286 = \$10,221$).

⁵ The IRS did not disallow appellant's itemized deductions as it appears that appellant only claimed the federal standard deduction on his federal return and did not itemize deductions for federal tax purposes.

⁶ An amount that is \$3,109 more than appellant's computation of revised tax in the amended returns filed by appellant ($\$9,395 - \$6,286 = \$3,109$).

\$7,112 of appellant's \$10,221 claim for refund, resulting in a denial of the remaining \$3,109.

10. Respondent provided an updated Wage and Income Transcript and IRS Account Transcript, both of which show that the IRS has not reduced appellant's AGI or taxable income or made any subsequent adjustments to its assessment upon which respondent is basing its assessment.
11. Appellant filed this timely appeal.

DISCUSSION

Respondent's determination is presumed correct, and the taxpayer has the burden of proving error. (*Appeal of Morosky*, 2019-OTA-312P). 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.)

Appellant argues that he never received respondent's August 4, 2020 letter and thus could not respond to that correspondence. However, appellant has not presented any argument or evidence that shows error in the federal adjustments or refutes respondent's determination based on those adjustments. We note the August 4, 2020 letter is attached to respondent's opening brief. Appellant had an opportunity to address respondent's conclusions in this letter by filing a reply brief but did not do so. A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence, if provided would have been unfavorable to the taxpayer's case. (*Appeal of Vardell*, 2020-OTA-190P). With regard to the \$13,311 in additional income which appellant did not include or report on his amended returns, appellant has not provided any information or documentation to show that he did not earn this income, or that this income was not taxable.

Appellant has failed to show the IRS canceled or revised its assessment upon which respondent's assessment is partially based. Moreover, the updated IRS transcript provided by respondent indicates that this amount is still included in appellant's federal AGI and the IRS has not subsequently modified or reduced its assessment. Further, regarding the claimed itemized deductions, appellant has failed to provide any evidence or documentation to substantiate the

claimed deductions. Therefore, we conclude that appellant has failed to meet his burden of proof.

HOLDING

Appellant has not established error in the proposed assessment for the 2015 tax year.

DISPOSITION

Respondent’s action is sustained in full.

DocuSigned by:
Natasha Ralston

Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
E. S. Ewing

Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:
Cheryl Akin

Cheryl L. Akin
Administrative Law Judge

Date Issued: 11/5/2021