OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 21037510
B. CABUNOC	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: B. Cabunoc

For Respondent: Rachel Abston, Senior Legal Analyst

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Cabunoc (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $735 and applicable interest, for the 2016 tax year.[1]

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, in part, on a federal adjustment, is incorrect?

FACTUAL FINDINGS

1. Appellant was a California resident during 2016 until on or about October 1, 2016, when appellant established residency out of state.[2]

[1] Although appellant tendered payment, that amount is being held in suspense pending the outcome of this appeal.

[2] The parties appear to agree that appellant's nonresident status was effective on and after October 1, 2016.

2. Appellant filed a timely joint California Resident Income Tax Return (Form 540) for the 2016 tax year.[3]
3. Appellant's Form 540 did not include all interest and pension income received by appellant during 2016.
4. After respondent processed appellant's return, it learned that the IRS adjusted appellant's federal income tax return for the unreported interest and pension income.
5. On the bases of the federal adjustment, respondent issued a Notice of Proposed Assessment to appellant proposing additional tax of $1,219, and applicable interest. Respondent's calculation of the additional tax reflected its belief (at that time) that appellant resided in California during all of 2016.
6. Appellant protested the assessment, explaining about appellant's move out of California and arguing that respondent had incorrectly calculated the proposed additional tax by including income appellant received from sources outside of California (non-California-source income) from October 1, 2016, through December 31, 2016.
7. By letter dated December 10, 2020, respondent replied to appellant's protest by explaining that appellant had used the wrong tax return form, the Form 540, which is used by full-time California residents, when appellant should have used the California Nonresident or Part-Year Resident Income Tax Return (Form 540NR). Respondent's letter also explained how respondent adjusted appellant's proposed additional tax from $1,219 to $735 using the required formula set forth in R&TC section 17041(b). Respondent included with the letter a Form 540NR that had been completed by respondent to represent how appellant should have completed the 2016 return, and a copy of a document that contained common taxpayer questions (and respondent's responses) regarding the Form 540NR. The letter asked appellant to respond within 30 days by agreeing to the proposed revised assessment or providing any new information that supports appellant's position. The letter also explained that absent a timely reply, respondent would send a written notice confirming its action.

[3] Although appellant filed the return jointly with appellant's spouse, this appeal is in appellant's name only. Our references in this Opinion will be to "appellant" (singular form); but depending on context, particularly when referring to the filed return, the reference may include appellant's co-filer.

8. Appellant did not respond to respondent's letter. Consequently, respondent issued a Notice of Action confirming the proposed assessment as revised. This timely 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. A deficiency assessment based on a federal adjustment to income is presumed accurate until the taxpayer proves otherwise. (*Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.)

California residents pay taxes on their entire taxable income (regardless of source), while nonresidents pay taxes on taxable income from California sources only. (R&TC, §§ 17041(a), (b), & (i), 17951.) Part-year residents are taxed on all taxable income earned while residents of this state (regardless of the source) but on only California-source taxable income while residing outside of California. (R&TC, § 17041(b) & (i).) This method for calculating tax on income received by part-year residents does not require the taxpayer to pay tax on non-California-source income received while a taxpayer is not a resident of California, but merely takes that income into consideration in determining the applicable tax rate (*ibid*.), allowable deductions (R&TC, § 17304), and allowable credits (R&TC, § 17055).

Appellant states she did not receive respondent's December 10, 2020 letter and does not understand why the proposed tax has been reduced rather than deleted entirely or how interest has been calculated. Because we have no other information to further explain appellant's position, we interpret appellant's statements to argue that there should be no additional tax or interest.[4]

The evidence shows that there was a federal adjustment to correct for appellant's omission of some retirement and interest income and that appellant's use of the wrong return form resulted in a miscalculation of tax. It also appears from the evidence that respondent's proposed assessment was accurately based on that federal adjustment and on respondent's use of

[4] We presume appellant received respondent's brief, which included a copy of the December 10, 2020 letter.

the correct return form (with the correct apportionment formula). Consequently, we must assume that the proposed assessment is correct until appellant proves otherwise.

It is undisputed that appellant resided in California through September 30, 2016, and that appellant filed a joint income tax return. Appellant, a part-year resident of California during 2016, used the incorrect return form and failed to report income from two sources. These were errors. Appellant should have reported all income using the Form 540NR, which would have guided appellant through the correct tax calculation. That calculation – the one used by respondent to calculate the proposed additional tax – does not result in taxation of non-California-source income earned while appellant resided outside of California. It merely applies the correct apportionment formula to appellant's taxable income. On that basis, we find that appellant has not overcome the presumption that respondent's proposed assessment is correct.

HOLDING

The evidence does not establish that respondent's proposed assessment, which is based, in part, on a federal adjustment, is incorrect.

DISPOSITION

Respondent's action is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:
272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
F8E81582726F448...
Richard Tay
Administrative Law Judge

Date Issued: 10/29/2021