

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
B. SIMON

) OTA Case No. 21057873
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OPINION

Representing the Parties:

For Appellant: B. Simon

For Respondent: Ziwei Wang, Graduate Legal Assistant

N. Dang, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Simon (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,314 plus applicable interest for the 2017 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellant failed to report \$20,173 in discharge of indebtedness income for the 2017 tax year.
2. Consequently, the IRS adjusted appellant’s 2017 federal income tax return to include this amount in income.
3. Upon learning of this federal adjustment, respondent issued to appellant a Notice of Proposed Assessment (NPA) which made a corresponding change to appellant’s 2017 state income tax return.

4. Appellant protested the NPA and respondent issued a Notice of Action affirming its NPA. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal determination or state where the change is erroneous. 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.*)

Appellant offers no argument or evidence challenging respondent's determination that appellant failed to report \$20,173 in discharge of indebtedness income for the 2017 tax year.¹ Appellant has not identified any exclusion which might apply to the discharge of indebtedness. (See, e.g., R&TC, § 24307, incorporating with some modifications, IRC, § 108.) Instead, appellant's sole contention is that the proposed assessment has been fully offset by the tax refunds due to appellant for the 2018 and 2019 tax years. We presume from this contention, that appellant does not contest respondent's proposed assessment,² but rather, appellant seeks a review of his payment history and a determination of his outstanding balance for the 2017 tax year, from the Office of Tax Appeals (OTA).

OTA is an administrative agency with limited subject matter jurisdiction. Our adjudicatory powers extend only so far as the determination of the correct amount of tax, fees, interest, or penalties, for the year, or years, at issue. (See *Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) Generally, we have no authority to address an appellant's legal rights which are unrelated to this determination. (See Cal. Code Regs., tit. 18, § 30104(d).) This includes addressing appellant's payment history and outstanding balance for the 2017 tax year,

¹ California conforms to the federal definition of "gross income" as provided by former Internal Revenue Code (IRC) section 61(a)(12), which states that gross income includes "income from the discharge of indebtedness." (R&TC, §§ 17071, 17024.5(a)(1).)

² Appellant also concedes in his protest letter filed with respondent that there "was a cancellation of debt that did occur."

neither of which affects the determination of appellant’s tax liability for that year. Therefore, we are unable to consider appellant’s contention any further.³

HOLDING

Appellant has 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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KL
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 11/23/2021

³ While the foregoing is dispositive, we note respondent provided documents showing that appellant’s 2018 overpayment was refunded to him, and his 2019 overpayment was intercepted by respondent at the request of the IRS, indicating that it was applied to appellant’s unpaid federal income tax liability. Thus, contrary to appellant’s position on appeal, none of these overpayments were credited to appellant’s account for the 2017 tax year.