

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21068061
R. BACOTE)
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OPINION

Representing the Parties:

For Appellant: R. Bacote

For Respondent: Anne Mazur, Program Specialist III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Bacote (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$571, and applicable interest, for the 2015 taxable year, and additional tax of \$1,048, and applicable interest, for the 2016 taxable year.

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

ISSUE

Has appellant established error in FTB's proposed assessments of additional tax for the 2015 and 2016 taxable years?¹

FACTUAL FINDINGS

1. Appellant filed timely California Nonresident or Part-Year Resident Income Tax Returns (Form 540NR) for 2015 and 2016. FTB accepted the returns and issued refunds for the reported overpayments each year.

¹ On appeal, appellant states that he seeks a refund for 2015 and 2016, which includes the interest assessed, but appellant does not make any arguments specific to interest abatement. Generally, to obtain waiver of interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012. However, OTA lacks jurisdiction to abate interest under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.) Appellant does not allege that any of the three statutory provisions are applicable to the facts of this case; and based on the arguments and evidence, we conclude that none of these provisions apply. Therefore, we do not address interest further.

2. FTB obtained information from the IRS that it had adjusted appellant's 2015 taxable income. Among other adjustments, the IRS moved \$12,550 of appellant's claimed deductions from Schedule A (Itemized Deductions) to Schedule C (Profit or Loss from Business), resulting in a decrease to appellant's reported adjusted gross income (AGI).² After further adjustments to appellant's itemized deductions, the IRS adjustments resulted in an increase to appellant's taxable income of \$7,119. Appellant entered into an installment payment agreement with the IRS on June 22, 2018, and made a final payment on September 24, 2020.
3. FTB obtained information from the IRS that it had adjusted appellant's 2016 taxable income. The IRS moved \$12,253 of appellant's claimed deductions from Schedule A to Schedule C, resulting in a decrease to appellant's reported AGI. After further adjustments to appellant's itemized deductions, the IRS adjustments resulted in an increase to appellant's taxable income of \$5,881. Appellant entered into an installment payment agreement with the IRS on June 22, 2018, and made consistent payments at least through June 23, 2021.
4. FTB issued Notices of Proposed Assessment (NPAs) for 2015 and for 2016. FTB proposed to increase appellant's 2015 taxable income by \$7,119, and 2016 taxable income by \$5,881. FTB proposed additional tax of \$571 for 2015 and \$1,048 for 2016.
5. Appellant protested the NPAs. FTB sent a letter to appellant, explaining that he should submit an IRS document showing that the IRS reduced or canceled the federal assessments.
6. Appellant did not respond to FTB, and FTB issued Notices of Action (NOAs) affirming the NPAs.
7. Appellant timely appealed.

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. FTB follows federal adjustments to the extent allowable under California law. (*Appeal of Breitman* (75-SBE-018) 1975 WL 3279.) It is well settled that a deficiency assessment based on a federal adjustment to income is

² There is nothing in our record to show which expenses the IRS shifted from Schedule A, itemized deductions, to Schedule C-1 business expenses.

presumed to be correct, and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Appellant asserts that he did not receive FTB's letters sent on April 9, 2021.³ Appellant requested that FTB⁴ provide him with "a breakdown of the audit" and "a copy of the original audit" received from the IRS. Appellant expressed that once he saw how FTB came to its totals, he could forward it to an accountant to review.

FTB included with its brief copies of the FedStar IRS Data Sheets that specified the adjustments made by the IRS. FTB also submitted NPAs, including all the calculations used to determine appellant's nonresident income from California sources. Thus, FTB has provided the information that appellant has requested.

Appellant did not submit a reply brief or documents showing that FTB's proposed assessments were in error. The record shows that the IRS did not reduce or cancel its assessment, but rather that appellant paid or is paying the additional tax assessed by the IRS. Appellant's unsupported statements of disagreement with the proposed assessments do not show error in FTB's determinations. Therefore, we find that appellant has not met his burden of proof on appeal.

³ The record indicates the letters were mailed to the same address as the NPAs and NOAs, which appellant acknowledged he received.


⁴ Appellant addressed his arguments to the Office of Tax Appeals, but we assume the references to "you" refer to FTB. The Office of Tax Appeals is an independent appeals agency staffed by its own tax experts. It is not affiliated with FTB or any other tax agency.

HOLDING

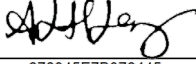
Appellant has not established error in FTB’s proposed assessments of additional tax for the 2015 and 2016 taxable years.

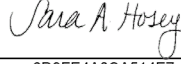
DISPOSITION

FTB’s actions are sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 11/19/2021