

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. BREWER

) OTA Case No. 21047602
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OPINION

Representing the Parties:

For Appellant:

D. Brewer

For Respondent:

Kristin K. Yeager, Program Specialist

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Brewer (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,162, and applicable interest, for the 2016 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 proven error in the proposed additional tax of \$1,162, and applicable interest, for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely 2016 California income tax return. Subsequently, FTB received federal audit information showing the IRS made adjustments to appellant’s federal return, increasing taxable income.
2. FTB issued a Notice of Proposed Assessment (NPA) applying the federal adjustments to appellant’s California tax return. The NPA revised appellant’s taxable income and proposed additional tax of \$1,162, and applicable interest.
3. Appellant protested the NPA, stating the IRS reduced the amount due after appellant provided additional documentation.

4. FTB issued a Notice of Action affirming the NPA after finding the federal assessment had not been canceled or reduced.
5. Appellant filed this timely appeal.

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. It is well settled that a deficiency assessment based on a federal adjustment to income is 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.*) Pursuant to R&TC section 17072, the amount of federal adjusted gross income reported on the California return must match the federal adjusted gross income accepted by the IRS.

FTB provided a copy of appellant's 2016 federal account transcript from the IRS showing appellant's federal adjusted gross income was revised and the IRS assessed additional tax on September 24, 2018. The transcript does not show appellant filed an amended federal return or that the IRS reconsidered its assessment.

On appeal, appellant asserts that the IRS did not receive information regarding cost basis for stock that should have reduced her income. However, the information appellant provided on appeal is not sufficient to verify the claimed cost basis for calculation of the capital gain for the stock sold in 2016. California generally conforms to the provisions of the Internal Revenue Code (IRC) relating to the treatment of gain or loss from the disposition of property. (R&TC, § 18031.) IRC section 1001(a) provides that the gain from the sale of property shall be the excess of the amount realized over the adjusted basis provided in IRC section 1011 for determining gain. IRC section 1012 generally provides that the basis of property shall be the cost of such property. Generally, the brokerage house is required to keep such historical information as to the purchase/cost basis of the stock acquired. Appellant provided Merrill Lynch bank statements listing "N/A" for cost basis for all stocks. The documents provided and the statements made by appellant show a date acquired but no corresponding amount for the basis. Appellant provides historical stock prices from Yahoo and contends that the historical price to the acquisition dates on the Merrill Lynch bank statements be used to approximate her basis. However, there is no indication that appellant acquired the stock by paying the market

value as listed on the Yahoo printouts, or what amount, if any, she paid for the acquisition of the stock. Therefore, the documentation provided on appeal is not sufficient evidence to substantiate the cost or the fair market value of the stock on the date acquired.

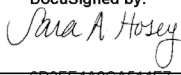
Appellant has not met the burden of proving that FTB’s determination is erroneous and therefore, the deficiency assessment based on a federal adjustment to income is presumed to be correct. (*Appeal of Valenti, supra.*)

HOLDING

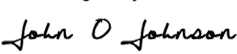
Appellant has not proven error in the proposed additional tax of \$1,162, and applicable interest, for the 2016 tax year.

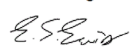
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:

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John O. Johnson
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 12/21/2021