

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21047656
B. CHILDS AND)
K. CHILDS)
_____)

OPINION

Representing the Parties:

For Appellants: B. Childs
K. Childs
For Respondent: Gi Jung Nam, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Childs and K. Childs (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,463, and applicable interest, for the 2016 taxable year.

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

ISSUE

Have appellants established error in FTB’s proposed assessment, which is based on a final federal determination?

FACTUAL FINDINGS

1. Appellants jointly filed a timely 2016 California Resident Income Tax Return.
2. FTB accepted the return as filed.
3. Subsequently, FTB received information that the IRS had made adjustments to appellants’ 2016 taxable income. FTB issued a Notice of Proposed Assessment (NPA) which proposed to make state adjustments corresponding to the federal adjustments, resulting in an increase in appellants’ taxable income.
4. Appellants filed a protest with FTB requesting settlement of the proposed liability.

5. FTB issued a Notice of Action affirming its NPA.
6. Appellants timely appealed to the Office of Tax Appeals (OTA), again requesting settlement.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellants have not provided evidence or argument to show that FTB's determination, which is based on federal adjustments, is incorrect, and in our review of the record, we find no error. Therefore, appellants have not established error in FTB's proposed assessment.

Appellants' only argument during their protest with FTB, and in this appeal to OTA is that they "settled with the IRS for a lesser amount and would like to settle this [FTB] action." The record shows that appellants established an installment payment agreement with the IRS until their federal liability was paid for 2016. However, OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay.¹ (*Appeal of Robinson*, 2018-OTA-059P.) Our function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*) Therefore, based on our earlier conclusion that the liability was correctly assessed, we have no legal basis upon which to make any adjustments to the amount of the assessment.

¹ After the decision in this appeal becomes final, appellants may wish to contact FTB to determine eligibility for its offer-in-compromise program or whether an installment payment agreement is appropriate. (See, for example, <https://www.ftb.ca.gov/pay/payment-plans/index.asp>, for information on FTB's installment payment program.)

HOLDING

Appellants have not established error in FTB’s determination, which is based on federal adjustments.

DISPOSITION

FTB’s action is sustained.

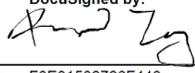
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Teresa A. Stanley
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Richard Fay
Administrative Law Judge

Date Issued: 1/10/2022