

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

L. CABEZAS AND
A. VELASQUEZ

) OTA Case No. 21078134
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OPINION

Representing the Parties:

For Appellants: L. Cabezas

For Respondent: Eric R. Brown, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Cabezas and A. Velasquez (appellants) appeal an action by Franchise Tax Board (respondent) proposing additional tax of \$1,443 for the 2013 tax year and \$2,523 for the 2014 tax year, and applicable interest for both tax years.

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

ISSUE

Whether appellants have shown respondent erred in its proposed assessments of additional tax, which are based on final federal determinations, for the 2013 and 2014 tax years.

FACTUAL FINDINGS

1. Appellants timely filed their 2013 and 2014 California income tax returns.
2. The IRS audited appellants 2013 and 2014 federal income tax returns and made adjustments that resulted in assessments of additional tax.
3. After receiving information of the IRS’s adjustments, respondent issued proposed assessments with state tax adjustments that corresponded with the IRS’s adjustments.
4. Appellants protested respondent’s proposed assessments for 2013 and 2014. Respondent denied the protests, affirming its proposed assessments.

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 respondent's determination, which is based on federal adjustments, is incorrect, and in our review of the record, we find none. Therefore, appellants have not established error in respondent's proposed assessment.

Appellants' appeal states that "this case was dismiss[sic] few years back." However, there is no evidence in the record supporting that argument. Rather, we find no procedural error in respondent's proposed assessment.

Appellants also cite economic hardship. While we are sympathetic to appellants' situation, 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 we can make any adjustments to the amount of the assessment.

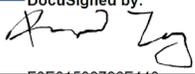
¹ After the decision in this appeal becomes final, appellants may wish to contact respondent to determine eligibility for its Offer in Compromise program or whether an installment payment agreement is appropriate. (See, for example, <https://www.ftb.ca.gov/pay/payment-plans/index.asp> for information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

HOLDING

Appellants have not shown respondent erred in its proposed assessments of additional tax, which are based on final federal determinations, for the 2013 and 2014 tax years.

DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 1/12/2022