

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21037483  
**K. SCHARTON** )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: K. Scharton

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals (OTA): Neha Garner, Tax Counsel III

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Scharton (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$623, plus interest, for tax year 2016.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant has established error in FTB’s proposed assessment for the 2016 tax year, which is based on a final federal determination.

**FACTUAL FINDINGS**

1. Appellant timely filed a California income tax return for the 2016 tax year.
2. Subsequently, FTB received information that the IRS adjusted appellant’s federal return to include discharge of indebtedness income of \$19,686 from Wells Fargo Bank, N.A. (Wells Fargo).
3. Based on the IRS information, FTB issued a Notice of Proposed Assessment (NPA) that correspondingly increased appellant’s California taxable income by \$19,686, resulting in proposed additional tax of \$623, plus interest.

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

### 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 adjustment to income is presumed to be correct and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including income from discharge of indebtedness. (IRC, § 61(a)(12).)

FTB has provided an updated copy of appellant's 2016 IRS account transcript verifying the federal adjustment. The transcript indicates that the IRS continues to include the \$19,686 of discharge of indebtedness income reported by Wells Fargo in appellant's federal income. The transcript also shows that appellant entered into an installment agreement with the IRS on November 19, 2018, that appellant made two payments to the IRS in 2019, and that the IRS has not modified or withdrawn its assessment. Thus, the record shows that the federal assessment is final, and that appellant is making payments toward her final federal tax liability.

Appellant asserts that she is already paying taxes of \$3,066 on this income, has a payment arrangement for these taxes, and references a CP521 Notice from the IRS. However, the federal income tax administered by the IRS and is separate and distinct from the California income tax administered by FTB. While appellant has established an installment agreement with the IRS for her federal taxes, appellant has not shown that she has made any payments to satisfy the proposed assessment of California income taxes asserted by FTB. Appellant also makes several arguments regarding the fairness of proposed assessment and her financial ability to pay the assessment. However, OTA lacks authority to make discretionary adjustments to the amount of a tax assessment.<sup>1</sup> (*Appeal of Robinson*, 2018-OTA-059P.) Our function in this appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*) Because income from the discharge of indebtedness is expressly included in gross

---

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

income (see R&TC, § 17071; IRC, § 61(a)(12)), and appellant has not shown that she did not receive this discharge of indebtedness income from Wells Fargo, that the income is excluded from gross income under IRC section 108, or that the IRS cancelled or reduced its final federal determination, appellant has not established error in FTB’s proposed assessment.

HOLDING

Appellant did not establish error in FTB’s proposed assessment for the 2016 tax year, which is based on a final federal determination.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Cheryl L. Akin*  
1A8C8E38740B4D9...  
Cheryl L. Akin  
Administrative Law Judge

We concur:

DocuSigned by:  
*Natasha Ralston*  
25F8FE08FF56478...  
Natasha Ralston  
Administrative Law Judge

DocuSigned by:  
*Michael F. Geary*  
1A9B52EF88AC4C7...  
Michael F. Geary  
Administrative Law Judge

Date Issued: 3/18/2022