

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
V. KO

) OTA Case No. 21057786
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OPINION

Representing the Parties:

For Appellant: V. Ko

For Respondent: Alisa L. Pinarbasi, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, V. Ko (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing an assessment of additional tax of \$1,093, plus interest, for the 2016 tax year.

Appellant waived her 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 determination, which is based on a federal determination by the IRS.

FACTUAL FINDINGS

1. Appellant timely filed a 2016 California income tax return using an address in Alhambra, California.
2. The IRS subsequently provided FTB with information showing that the IRS made adjustments to appellant’s federal adjusted gross income (AGI), including an adjustment to reflect unreported income reported by Pershing, LLC of \$11,002 on a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) on July 16, 2020, that increased appellant's taxable income by \$11,002 and proposed to assess additional tax of \$1,093, plus interest. The NPA was mailed to appellant at an address in San Francisco, California.
4. Appellant timely protested the NPA on September 14, 2020, using the San Francisco address as reflected on the NPA. FTB responded in a general correspondence letter dated February 19, 2021, using the San Francisco address. The letter indicated that if the IRS cancelled or reduced its federal assessment, appellant should provide a copy of the revised IRS report.
5. FTB affirmed the NPA in a Notice of Action (NOA) dated April 1, 2021, that used the San Francisco address. This timely appeal followed.¹

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. (*Appeal of Valenti*, 2021-OTA-093P.) 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. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

FTB based its determination on a federal adjustment by the IRS to reflect unreported income of \$11,002. FTB provided a copy of appellant's 2016 federal wage and income transcript and federal account transcript. The wage and income transcript shows that appellant received a Form 1099-R reporting a taxable distribution of \$11,002. Appellant asserts that the \$11,002 is from the \$5,500 contribution made to her individual retirement account (IRA) in two tax years, and that she contributed to a traditional IRA, which was converted to a Roth IRA. Appellant provides a 2016 federal Form 8606, Nondeductible IRAs, which includes \$5,500 as her IRA contributions.

However, appellant's evidence does not show that the distribution of \$11,002 is not taxable. The federal account transcript shows that the IRS adjusted appellant's federal AGI to include the unreported income and does not indicate any further adjustments by the IRS. In

¹ FTB states that it received a payment of \$1,260.06, which is currently in suspense pending the outcome of this appeal.

addition, the account transcript shows that appellant paid the federal tax due. Therefore, the evidence indicates that the federal determination is final. Appellant's evidence does not establish that the final IRS determination, on which FTB based its proposed assessment, is erroneous. In addition, appellant has not shown that the income is not taxable. As a result, we find that appellant has not met her burden to show error in FTB's determination.

Appellant also asserts that she did not receive the FTB general correspondence letter dated February 19, 2021. In this case, while appellant's 2016 tax return used an Alhambra address, FTB's letter dated February 19, 2021, was sent to the same San Francisco address used in the NPA previously issued on July 16, 2020, that appellant admittedly received. In addition, appellant used the San Francisco address on her timely NPA protest letter dated September 14, 2020, and appellant received the NOA, which was sent to the same address on April 1, 2021. Therefore, the evidence shows that FTB used the address which it had reason to believe was the most current address for appellant. Because the letter was mailed to appellant's most current address and appellant received mail at this address before this letter was sent, appellant has failed to show that she did not receive FTB's letter dated February 19, 2021.

We also note that the NPA and NOA were mailed to appellant's last-known address, which, in this case, was the San Francisco address which FTB had reason to believe was appellant's most current address, as discussed above.² (See R&TC, § 18416(c).) An NPA and NOA are required by statute to be mailed and those notices are sufficient if mailed to a taxpayer's last-known address.³ (See R&TC, §§ 19033(a), 19045(a), 18416(b).) Once a protest has been filed after the issuance of the NPA, FTB may act on the protest in whole or in part. (R&TC, § 19044.) However, there is no statutory notice requirement for the general correspondence letter that was issued to appellant prior to the NOA. Therefore, there is no requirement that such mailing be "sufficient" as contemplated by R&TC section 18416.

² "The last known address shall be the address that appears on the taxpayer's last return filed with the Franchise Tax Board, unless the taxpayer has provided to the Franchise Tax Board clear and concise written or electronic notification of a different address, or the Franchise Tax Board has an address it has reason to believe is the most current address for the taxpayer." (R&TC, § 18416(c).)

³ "For purposes of this part, any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address." (R&TC, § 18416(b).)

HOLDING

Appellant has not established error in FTB’s determination, which is based on a federal determination by the IRS.

DISPOSITION

FTB’s action is sustained.

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Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Cheryl L. Akin
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Cheryl L. Akin
Administrative Law Judge

DocuSigned by:
Huy “Mike” Le
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Huy “Mike” Le
Administrative Law Judge

Date Issued: 2/17/2022