

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21068016  
**D. GARITE** )  
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**OPINION**

Representing the Parties:

For Appellant: D. Garite  
For Respondent: Christopher M. Cook, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Garite (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$860.94, plus interest, for the 2015 tax year.

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

**ISSUE**

Whether appellant has shown error in FTB’s proposed assessment of additional tax, which is based on a final federal determination.

**FACTUAL FINDINGS**

1. FTB received information from the IRS indicating it had assessed appellant additional tax for the 2015 tax year because it had determined that appellant underreported his federal taxable income by \$14,849. This amount consisted of employee compensation from three employers: \$14,307 from Westwood One (Westwood); \$520 from Valley Charter School; and \$22 from Enrichment Educational Experie.
2. Based on the federal determination, FTB increased appellant’s California taxable income by the \$14,849 and issued a Notice of Proposed Assessment (NPA) for the 2015 tax year proposing additional tax of \$860.94, plus interest.

3. Following protest proceedings, FTB affirmed its NPA by issuing a Notice of Action. This timely appeal followed.

### DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal determination or to state where the change is erroneous. It is well settled that FTB's proposed assessment based on a federal determination is presumptively correct and the taxpayer bears the burden of proving the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Chen and Chi*, 2020-OTA-021P.)

Appellant contends Westwood accidentally direct deposited \$14,307 into his bank account in 2015.<sup>1</sup> Appellant claims he repaid Westwood through a payment plan memorialized by a promissory note signed by appellant and dated July 31, 2015, which he submits on appeal. That note indicates appellant promised to pay, through a series of installments, a total of \$10,248.66 to a company called Cumulus Media Holdings, Inc., but all payments were to be timely received by Westwood. Appellant also submits what he alleges is a printout of a spreadsheet from Westwood's attorney that shows Westwood received payments totaling \$10,215.44 from appellant.

However, we find appellant's evidence to be unpersuasive for several reasons. The promissory note makes no mention of why it was entered into and therefore it is unclear whether it serves the purpose appellant alleges—i.e., to pay back compensation accidentally deposited into his bank account. The note does not specify, and appellant provides no explanation of, the relationship between Westwood and Cumulus Media Holdings, Inc. and how that relates to the compensation at issue. It is also unclear why the total due on the note is \$10,248.66 as opposed to \$14,307, which is the amount appellant alleges Westwood accidentally paid to him. Further, appellant has not produced underlying documentary support, such as bank statements, showing he in fact repaid any amount. Lastly, even if appellant's evidence establishes that Westwood

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<sup>1</sup> Appellant makes no argument with respect to the additional employee compensation of \$520 from Valley Charter School or \$22 from Enrichment Educational Experie. Therefore, we find no error in FTB's determination increasing appellant's 2015 California taxable income by these amounts.

erroneously paid him compensation in 2015 and he repaid this amount back, the record does not support this erroneous compensation was reflected in the Form W-2 issued by Westwood because that W-2—on which the federal assessment is based that FTB in turn followed for its proposed assessment—could properly reflect actual wages paid to appellant by Westwood.

Instead, based on appellant’s IRS Wage and Income Transcripts from June 29, 2021, the evidence shows he received compensation of \$14,307 from Westwood in 2015 and he has not produced evidence indicating otherwise or that the IRS assessment has been revised or withdrawn. For these reasons, we uphold FTB’s proposed assessment.

HOLDING

Appellant has not shown error in FTB’s proposed assessment of additional tax.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*E.S. Ewing*  
2D8DE82EB65E4A6...  
Elliott Scott Ewing  
Administrative Law Judge

DocuSigned by:  
*Cheryl L. Akin*  
1A8C8E38740B4D3...  
Cheryl L. Akin  
Administrative Law Judge

Date Issued: 2/16/2022