

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. STEPHAN

) OTA Case No. 21088421
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OPINION

Representing the Parties:

For Appellant: M. Stephan

For Respondent: Joel Smith, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Stephan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$11,652 for the 2015 tax year.

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

ISSUE

Whether appellant is entitled to a refund for the 2015 tax year.

FACTUAL FINDINGS

1. On May 24, 2016, appellant filed his 2015 California tax return (Form 540) using the filing status of married filing separately, reporting \$1,485 in total tax, \$10,095 in income tax withholdings, and an overpayment of \$8,610. Appellant requested that the overpaid tax of \$8,610 be credited to appellant’s 2016 estimated tax.
2. Appellant left blank line 13 (federal adjusted gross income (AGI) and line 17 (California AGI) on his 2015 California tax return. As a result, FTB entered appellant’s federal and California AGI as zero into its computer records and determined that there was zero tax liability and a \$10,095 overpayment. Consistent with appellant’s return request, FTB

- transferred \$8,610 to appellant's 2016 tax year. On June 14, 2016, FTB issued a refund of \$1,485 to appellant.
3. On May 15, 2019, FTB sent correspondence explaining that a processing error had occurred, resulting in the erroneous refund of \$10,095. FTB recalculated the tax liability to be \$11,652 for the 2015 tax year; therefore, an additional tax of \$1,557 was owing as of the return due date. FTB requested that appellant return the erroneous refund of \$10,095¹ and pay the additional tax of \$1,557 within 30 days of FTB's correspondence.
 4. Because appellant had not responded, FTB issued a Notice of Proposed Assessment (NPA) imposing an additional tax of \$11,652. Appellant timely protested the NPA.
 5. FTB acknowledged the protest and affirmed its position in a letter dated May 24, 2021.² Appellant submitted a letter contesting FTB's determination. On July 15, 2021, FTB issued a Notice of Action affirming the NPA.
 6. This timely appeal followed.

DISCUSSION

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Drummond*, 2020-OTA-097.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Drummond, supra.*) FTB's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Appellant does not raise any allegation of error with respect to FTB's recalculation of his federal or California AGI or of his tax liability of \$11,652 for the 2015 tax year.³ Therefore,

¹ This amount consists of \$1,485 refunded to appellant on June 14, 2016; \$8,191.04 transferred to the IRS to offset appellant's federal liabilities on July 7, 2017; \$197.96 refunded to appellant on July 7, 2017; and \$221 applied to appellant's 2016 tax liability, effective April 15, 2017.

² On appeal, FTB states that under typical work constraints, it should not take FTB more than six months to assign a protest to a representative and for a representative to contact the taxpayer; therefore, FTB should have issued the contact letter by February 16, 2020, as opposed to May 24, 2021. FTB concedes that its delay was in the performance of a ministerial or managerial act and agrees to abate interest on the erroneous refund pursuant to R&TC section 19104(a) from February 16, 2020, through May 24, 2021.

³ California generally conforms to Internal Revenue Code section 62, defining federal AGI, except as otherwise provided. (R&TC, § 17072(a).) Taxpayers generally must report the same federal AGI on both their federal and California returns, subject to California-specific addition and subtraction modifications. FTB initially incorrectly processed appellant's return using a federal AGI of zero, following appellant's reporting on his

FTB's determinations are presumed correct.

Nor does appellant raise any allegation of error with respect to FTB's determination that the refund was erroneous and should be repaid. As noted above, appellant reported \$10,095 in income tax withholding on his return, and FTB admittedly erred by refunding that amount after improperly calculating his tax due. Nevertheless, the R&TC authorizes FTB to assess and collect an erroneous refund provided that it issues a notice and demand for repayment within two years after the date of the erroneous refund, or within the applicable period within which it may timely issue an NPA, whichever period expires later. (R&TC, § 19368.) The R&TC generally provides that an NPA shall be mailed to the taxpayer within four years after the return was filed. (R&TC, § 19057(a).) Within four years of when appellant's return was filed on May 24, 2016, FTB timely issued an NPA proposing to assess an amount, which included the erroneous refund. Therefore, FTB properly issued a notice and demand for repayment of the erroneous refund.

Appellant's sole contention on appeal is that he did not receive the refund at issue, as his bank statements show no deposits equaling or totaling the erroneous refund. However, appellant fails to provide any evidence to support this argument. Thus, we find no error in FTB's actions.

California return. FTB subsequently recalculated appellant's taxable income to match his federal AGI. We see no error in FTB's adjustment.

HOLDING

Appellant is not entitled to a refund for the 2015 tax year.

DISPOSITION

FTB’s action is modified to abate interest from February 16, 2020, through May 24, 2021, as conceded by FTB. FTB’s action in denying appellant’s claim for refund is otherwise sustained.

DocuSigned by:
Asaf Kletter

Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour

Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
E. S. Ewing

Elliott Scott Ewing
Administrative Law Judge

Date Issued: 3/23/2022