

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. TAYLOR

) OTA Case No. 20127041
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OPINION

Representing the Parties:

For Appellant: K. Taylor

For Respondent: Melisa Recendez, Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Taylor (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$742 plus interest for the 2015 taxable year.

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

ISSUE

Has appellant established that FTB erred in allowing the standard deduction in place of appellant’s gambling loss deductions?

FACTUAL FINDINGS

1. Appellant filed a timely 2015 joint California Resident Income Tax Return.¹ FTB accepted the return and refunded the amount requested.
2. Subsequently FTB received information from the IRS indicating that appellant had unreported income, including unreported gambling winnings.

¹ Appellant claims the return was filed without her knowledge by her spouse from whom she was separated at the time. It is not relevant to the outcome of this appeal, so we do not address it further.

3. FTB issued to appellant and her spouse (the couple) a Notice of Proposed Assessment (NPA) increasing their taxable income by \$7,935.²
4. Appellant responded to FTB notices and provided an IRS Account Transcript showing that the IRS had adjusted the couple's taxable income by allowing appellant's gambling losses of \$6,539 as an itemized deduction.³ Appellant's federal itemized deductions also included \$12,814 in state and local tax paid.
5. FTB sent a letter to appellant informing her that because it had collected the full liability, appellant's correspondence was treated as a claim for refund. It also informed her that California does not allow a deduction for state and local taxes paid. Since the remaining itemized deductions of \$7,539 (\$20,353 total federal itemized deductions less state and local taxes of \$12,814) were less than the 2015 standard deduction for the couple based on a filing status of married filing jointly (\$8,088), FTB stated it would allow the higher, standard deduction.
6. When appellant did not respond, FTB denied the claim for refund. This timely appeal followed.

DISCUSSION

When the IRS makes changes or corrections to an individual's tax return and the changes increase the amount of California tax owed, the taxpayer must report the federal changes and either concede the accuracy of the federal determination or prove that the federal adjustments are erroneous. (R&TC, § 18622(a).) An FTB deficiency assessment that is based on a federal audit report is presumed to be correct, and appellant bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) California conforms to Internal Revenue Code (IRC) section 165, except as otherwise provided. (R&TC, § 17201(a).) As relevant here, IRC section 165(d) allows as a deduction any loss sustained during the taxable year from wagering transactions (gambling) to the extent of any gambling winnings included in income. California does not allow a deduction for state and local taxes paid. (R&TC, § 17220(a).)

² This consists of unreported gambling income of \$6,529, interest income of \$396, and other income of \$1,000. Appellant does not dispute the inclusion of these amounts in income. Appellant only asserts that the gambling income should be offset by gambling losses.

³ Appellant claimed gambling losses of \$6,539 in her correspondence with FTB. In a corrected Form 540 prepared by FTB, the agency appears to have allowed \$7,539 of gambling loss deductions. Both amounts are less than the standard deduction and do not affect the outcome of this appeal.

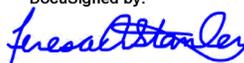
Appellant asserts that FTB's assessment was erroneous because FTB did not allow her a deduction for gambling losses to which she is entitled. The record on appeal shows that FTB did, in fact, allow appellant her gambling losses. Out of the \$20,353 in deductions allowed by the IRS, \$12,814 was for state and local tax deductions, which are not allowable deductions for California purposes. After reducing the federal deductions by the \$12,814, appellant's remaining deduction allowed by FTB, of \$7,539,⁴ is less than the standard deduction for taxable year 2015. Based on the couple's filing status of married filing jointly, the 2015 standard deduction was \$8,088. FTB properly subtracted the \$8,088 (which is more than appellant's claimed gambling loss deductions) from appellant's adjusted gross income to calculate California taxable income.

HOLDING

Appellant has not shown error in FTB's substitution of the standard deduction in place of appellant's gambling losses.

DISPOSITION

FTB's action is sustained.

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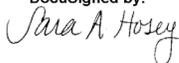
 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Keith T. Long
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 4/19/2022

⁴ See footnote, *ante*.