

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21047680
)
B. MARSHALL AND)
E. MARSHALL)
)
)

OPINION

Representing the Parties:

For Appellants: B. Marshall and E. Marshall

For Respondent: Gi Jung Nam, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Marshall and E. Marshall (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,257, and applicable interest, for the 2016 tax year.

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

ISSUE

Whether appellants have established error in respondent's proposed assessment for the 2016 tax year, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2016 California Resident Income Tax Return.¹
2. Subsequently, respondent received federal information that showed that the IRS adjusted appellants' joint 2016 federal income tax return. Specifically, the IRS increased appellants' adjusted gross income by \$13,518 for unreported pension or annuities income.

¹ Appellants were married during the tax year at issue; however, appellants have indicated that they are no longer married.

3. Based on the federal information, respondent made conforming adjustments to appellants' joint 2016 California Resident Income Tax Return, which resulted in additional tax of \$1,257. Respondent informed appellants of the adjustments and proposed additional tax by Notice of Proposed Assessment (NPA) dated August 19, 2020.
4. Appellants timely protested the NPA.
5. Respondent affirmed the NPA by Notice of Action dated April 13, 2021.
6. This timely appeal followed.
7. Subsequently, respondent obtained appellants' federal Wage and Income Transcript dated May 24, 2021, which states that Morgan Stanley reported a \$13,518 rollover contribution as taxable.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. It is well settled that a proposed assessment based on a federal determination is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a proposed assessment based on a federal action. (*Appeal of Gorin, supra.*)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including pensions and annuities. (See IRC, § 61(a)(9) & (11).) Generally, a distribution from a qualified retirement plan or individual retirement account (IRA) is included in income for the year of distribution. (IRC, §§ 402(a) & 408(d).)²

Here, respondent obtained information from the IRS that appellants' joint 2016 federal taxable income had been increased. Respondent made conforming adjustments to appellants' joint 2016 California Resident Income Tax Return, which resulted in the proposed assessment. Based on these federal adjustments, respondent's proposed assessment is presumed correct. Therefore, it is appellants' burden of proof to show that the proposed assessment is erroneous.

² California conforms to these statutes pursuant to R&TC section 17501(a).

On appeal, appellants argue that they disputed the IRS's determination; however, appellants have not provided any additional documentation to demonstrate that the IRS's determination was canceled or otherwise modified. As a result, we conclude that appellants have not established that the federal determination was canceled or reduced such that respondent's proposed assessment should also be canceled or reduced.

Appellants also argue that the transaction at issue was a tax-free rollover and not a distribution from a qualified retirement plan. In support of this argument, appellants provided a copy of a check from Morgan Stanley to Capital Bank and Trust Company, which listed an amount of \$13,518.40³ and a transaction type as "Direct Rollover" on the notes section of the check. However, appellants did not provide any additional information such as the type of account at the different financial entities. While it is possible to have a tax-free rollover of funds from certain qualified accounts into other qualified accounts (see, e.g., IRC, §§ 401(a)(31) & 408(d)(3)), appellants have not provided sufficient information indicating whether the transaction at issue fell within any of these specific statutes. For example, the record does not reflect whether the accounts were traditional IRAs or Roth IRAs. Simply stated, appellants have not provided such information or documentation, and we are unable to make a determination based on the evidence in the record. Furthermore, the evidence indicates that the transaction was subject to tax because appellants' federal Wage and Income Transcript dated May 24, 2021, states that Morgan Stanley reported to the IRS that the distribution was taxable for the entire amount of \$13,518. Appellants' check and unsupported statements are not enough to contradict the federal Wage and Income Transcript.

Based on the foregoing, we find that appellants have not met their burden of proof that respondent's proposed assessment is erroneous.

³ The IRS allows taxpayers to round off cents into whole dollar amounts. (See IRS Pub. 17.) As a result, it is our understanding that the amount of \$13,518.40 was rounded to \$13,518.

HOLDING

Appellants have not established error in respondent’s proposed assessment for the 2016 tax year, which is based on a final federal determination.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 4/4/2022