

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. PAL

) OTA Case No. 21088309
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OPINION

Representing the Parties:

For Appellant: M. Pal

For Respondent: Camille Dixon, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Pal (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,514, plus applicable interest for the 2017 tax year.

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

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessment, which is based on a federal audit determination.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return for the 2017 tax year.
2. The Internal Revenue Service (IRS) audited appellant’s 2017 federal income tax return and adjusted appellant’s income, which resulted in a tax deficiency. Specifically, the IRS increased appellant’s taxable income by taking into account unreported cancellation of debt income in the amount of \$26,318 from JPMorgan Chase Bank. The IRS determination then went final.
3. Following the IRS action, FTB issued to appellant a Notice of Proposed Assessment (NPA) and proposed to make a conforming state adjustment as a result of the final federal

determination. The NPA reflected revised California taxable income to include cancellation of debt income in the amount of \$26,318.

4. Appellant timely filed a protest of the NPA.
5. FTB issued a Notice of Action affirming the NPA in its entirety.
6. Appellant then timely filed this appeal.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to report federal changes to a return and either concede the accuracy of the federal changes to the taxpayer's income or state where the changes are erroneous. 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. (*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 an assessment based on a federal action. (*Appeal of Gorin*, *supra*.) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, such determinations must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Ibid*.)

As mentioned above, the IRS audited appellant's 2017 federal income tax return and adjusted appellant's income. Specifically, the IRS increased appellant's taxable income by including unreported cancellation of debt income in the amount of \$26,318 from JPMorgan Chase Bank. As a result of the IRS adjustments, FTB proposed additional tax of \$1,514, plus applicable interest.

Appellant appeals the proposed assessment of additional tax for two reasons: (1) appellant was unaware of the cancellation of debt income (appellant asserts she called FTB and FTB could not tell appellant where the debt was from or even if the discharged debt belonged to appellant); and (2) she suffers from financial hardship because she was in between jobs at the time of the appeal, she was the sole provider for her household, her previous work hours were reduced by the COVID-19 pandemic, her wages were already garnished for a previous debt, and she can not afford another payment.

We acknowledge appellant's difficult circumstances with respect to the first contention. However, appellant's contentions do not address the correctness of the IRS audit nor FTB's corresponding proposed assessment based on the federal determination. In particular, appellant provides no documentation or other evidence that the IRS's adjustment, related to the unreported cancellation of debt income, is erroneous. Appellant also has not provided evidence that the original debt discharged by JPMorgan Chase Bank did not belong to her. Thus, appellant has not met the burden of proving that FTB's adjustment based on the federal adjustment was incorrect or that the IRS has changed its determination. Furthermore, we are cognizant of appellant's second contention regarding her financial hardship, but we lack authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay.¹ (*Appeal of Robinson*, 2018-OTA-059P.) Therefore, we have no legal basis upon which we can make any adjustments to the amount of the assessment.

HOLDING

Appellant has not demonstrated error in FTB's proposed assessment, which is based on a federal audit determination.

DISPOSITION

FTB's action is sustained.

DocuSigned by:



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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:



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Huy "Mike" Le
Administrative Law Judge

Date Issued: 4/19/2022

¹ Although we lack jurisdiction to adjust final liability based on financial hardship, FTB may consider appellant's inability to pay under its payment arrangement or offer in compromise programs. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)