

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21119105
 C. HU AND)
 J. SHEN)
 _____)

OPINION

Representing the Parties:

For Appellants: C. Hu and J. Shen

For Respondent: Camille Dixon, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Hu and J. Shen (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,474.61, plus applicable interest, for the 2017 tax year.

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

ISSUE

Whether appellants have shown error in FTB's proposed assessment of additional tax, which is based upon a final federal determination.

FACTUAL FINDINGS

1. Appellants timely filed their joint 2017 California income tax return, and reported wages from three Forms W-2, which were attached to their return. The three Forms W-2 collectively reported total state wages of \$180,274: the first reported \$92,712; the second reported \$84,155; and the third reported \$3,407.¹ FTB accepted appellants' 2017 California return as filed.

¹ Appellants did not report any modifications to the income on Schedule CA of their 2017 California return.

2. FTB received information from the IRS indicating that it had audited and determined that appellants failed to include a fourth Form W-2 (Fourth Form W-2) reporting \$28,612 in wages. The IRS increased appellants' federal adjusted gross income (AGI) by the \$28,612 and allowed additional federal withholding credits reported on the Fourth Form W-2. On September 16, 2019, the IRS's determination became a final federal determination for the 2017 tax year.
3. On October 15, 2020, FTB issued a Notice of Proposed Assessment (NPA) proposing to follow the IRS adjustment, increase California AGI by \$28,612 to reflect the unreported wage income from the Fourth Form W-2, and allow additional state withholding credits. The NPA proposed additional tax due of \$1,474.61, plus interest.
4. On October 21, 2020, appellants filed a timely protest. FTB acknowledged the protest and affirmed its position in a letter dated July 19, 2021. The July 19, 2021 letter explained that the final federal determination was the basis for FTB's adjustment and requested a copy of the appellants' federal account transcript or other support for a lower federal AGI if appellants continued to disagree with FTB's adjustment.
5. Appellants did not reply, and on October 19, 2021, FTB affirmed the NPA with a Notice of Action.
6. This timely appeal followed.

DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) 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 providing that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra*.)

Here, FTB received information from the IRS that appellants' federal AGI was adjusted and increased by \$28,612 for the 2017 tax year. Furthermore, in December 2021, FTB obtained appellants' 2017 federal account transcript, which indicated that appellants' federal AGI did not

change from the amount reported to FTB by the IRS and was not adjusted or cancelled. Thus, it is appellants' burden to show that FTB's proposed assessment is erroneous.²

Appellants provide no evidence to contest the final federal determination, and their sole contention on appeal is that the NPA duplicates the IRS adjustment when the NPA proposes to increase their taxable income by \$28,612 and credits state income tax withholding on that income. On appeal, FTB provides a copy of appellants' 2017 California return, showing that the Fourth Form W-2 was not attached to the return, and that appellants' wage income of \$180,274 reported on their 2017 California return is the sum of the first three Forms W-2, and therefore does not include the Fourth Form W-2 reporting the wages at issue. The NPA accordingly proposed to increase appellants' originally reported California AGI by \$28,612 and credit applicable state income tax withholding. Appellants have not shown with credible and competent evidence that they reported the wages from the Fourth Form W-2 on their 2017 California return. Accordingly, appellants have not demonstrated error in FTB's proposed assessment.

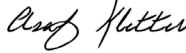
² For personal income tax purposes, California generally conforms to Internal Revenue Code section 62, defining federal AGI, except as otherwise provided. (R&TC, § 17072(a).) A taxpayer must generally report the same federal AGI from the federal return on his or her California return, subject to California-specific addition and subtraction modifications.

HOLDING


Appellants have not shown error in FTB’s proposed assessment of additional tax, which is based upon a final federal determination.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

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Huy "Mike" Le
Administrative Law Judge

DocuSigned by:

272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

Date Issued: 5/12/2022