

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**C. LEWIS AND**  
**J. LEWIS**

) OTA Case No. 18032466  
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**OPINION**

Representing the Parties:

For Appellants: Steven Resnick, CPA

For Respondent: Joel M. Smith, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Lewis and J. Lewis (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,064, and applicable interest, for the 2012 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 established error in respondent’s proposed assessment of additional tax, which is based on final federal adjustments.

**FACTUAL FINDINGS**

1. Appellants filed a joint 2012 California Resident Income Tax Return (Form 540) on September 17, 2013.
2. Subsequently, respondent received information from the IRS indicating that the IRS disallowed appellants’ claimed miscellaneous deductions listed on Schedule A, Itemized Deductions, resulting in an increase to appellants’ federal taxable income.
3. Respondent correspondingly issued a Notice of Proposed Assessment (NPA) to appellants based on the IRS’s adjustment, which increased appellants’ taxable income. This resulted in a proposed additional tax of \$1,064.

4. Appellants protested the NPA. Subsequently, respondent issued a position letter explaining why it disallowed appellants' itemized deductions, and appellants asked that respondent delay action until the IRS completed a review of appellants' 2012 tax year. After respondent reviewed additional information from the IRS, respondent issued a Notice of Action, affirming the NPA. This timely appeal followed.
5. On October 31, 2017, appellants filed their opening brief, requesting a deferral to obtain additional information from the IRS, which the Office of Tax Appeals (OTA) granted. Appellants subsequently filed additional deferral requests that effectively deferred the appeal through July 9, 2021. After the last deferral period had lapsed, OTA notified appellants that the appeal was returned to active proceedings. OTA provided appellants an opportunity to file a supplemental opening brief. Appellants did not submit a brief. Appellants were also given an opportunity to file a reply brief after respondent filed its opening brief, but again appellants did not file a brief.

#### DISCUSSION

Pursuant to R&TC 18622(c), a taxpayer must “concede the accuracy of a [federal] determination or state wherein it is erroneous.” It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

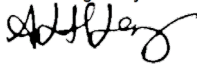
Appellants have not provided any arguments or contentions explaining their position. Appellants have therefore failed to meet their burden.

HOLDING


Appellants have not established error in respondent’s proposed assessment of additional tax, which is based on final federal adjustments.


DISPOSITION

Respondent’s action is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

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Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 5/27/2022