

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21108776
L. VALENZUELA)
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OPINION

Representing the Parties:

For Appellant: Travis R. Cramer, CPA

For Respondent: Christopher M. Cook, Tax Counsel

A KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Valenzuela (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,384, and applicable interest, for the 2013 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has shown error in FTB’s proposed assessment of additional tax, which is based upon a final federal determination.

FACTUAL FINDINGS

1. Appellant timely filed his 2013 California resident income tax return (original return). Appellant later filed an amended 2013 California resident income tax return (amended return) and a second amended 2013 California resident income tax return (second amended return). As relevant here, the second amended return reported a modified

- federal adjusted gross income (AGI).¹ FTB accepted appellant's second amended return as filed.
2. FTB later received information from the IRS indicating that it had examined appellant's federal return for the 2013 tax year and, in an adjustment that became final, increased appellant's federal AGI by \$47,135.
 3. On July 20, 2020, FTB issued a Notice of Proposed Assessment (NPA) proposing to follow the IRS adjustment and increase appellant's California AGI by \$47,135. The NPA proposed additional tax due of \$4,384, plus interest. The NPA explained that the final federal determination was the basis for FTB's adjustment and requested a copy of appellant's most recent federal audit report if FTB's adjustments differed from the report.
 4. Appellant filed a timely protest. Appellant did not provide a federal audit report for the 2013 tax year. FTB acknowledged the protest and affirmed its position in a letter. The letter explained that the final federal determination was the basis for FTB's adjustment and requested a copy of appellant's federal account transcript if appellant continued to disagree with FTB's adjustment, or other support for a lower federal AGI if the IRS later cancelled, revised, or accepted a lower federal AGI.²
 5. When appellant did not respond, FTB affirmed the NPA in a Notice of Action.
 6. This timely appeal followed.
 7. On appeal, FTB provides a federal account transcript that does not show any change in the final federal determination for the 2013 tax year.

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*,

¹ The original return, amended return and second amended return all reported a \$6,529 subtraction for California-specific adjustments.

² The letter erroneously references the federal AGI of the first amended return, not the second amended return that shows a different federal AGI, but it otherwise correctly explains the final federal determination was the basis for the adjustment.

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 indicating that it had increased appellant's federal AGI by \$47,135 for the 2013 tax year. FTB obtained appellant's 2013 federal account transcript and master file, which indicated that appellant's federal AGI did not change from the amount reported to FTB by the IRS and was not adjusted or cancelled. Thus, it is appellant's burden to show that FTB's proposed assessment is erroneous.³

Appellant's sole contention on appeal is that the IRS has not yet updated its records concerning appellant's federal AGI, which appellant asserts is the amount reported on the second amended return and thus is not increased by the \$47,135. On appeal, FTB provides a copy of appellant's 2013 federal account transcript and master file, which confirms the IRS increased appellant's federal AGI by \$47,135 and it therefore did not accept the lower federal AGI shown on appellant's second amended return. FTB correspondingly proposed to increase appellant's California AGI by \$47,135. Appellant has not shown with credible and competent evidence that the federal determination is incorrect, or was cancelled or revised. Accordingly, appellant has not demonstrated error in FTB's proposed assessment.


³ 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 adjustments.

HOLDING

Appellant has 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.

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Asaf Kletter
Administrative Law Judge

Date Issued: 6/15/2022