

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21098707
C. HERRERA)
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OPINION

Representing the Parties:

For Appellant: C. Herrera
For Respondent: Topher Tuttle, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Herrera (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$3,562, and applicable interest, for the 2015 tax year.

The matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Is a reduction to the proposed assessment, which is based on a final federal determination, warranted?

FACTUAL FINDINGS

1. Appellant timely filed his 2015 California Resident Income Tax Return reporting an overpayment and requesting a refund, which respondent issued on February 5, 2016.
2. The IRS audited appellant’s 2015 federal income tax return. The audit resulted in increases to appellant’s adjusted gross income and to his federal income tax due. That federal determination is now final. Appellant made a partial payment toward his federal tax liability and entered into an agreement with the IRS to pay the remainder in installments.
3. Appellant did not report the federal adjustment to respondent.

4. When respondent learned about the federal adjustment, it proposed corresponding adjustments to appellant's California tax liability in a December 6, 2018 Notice of Proposed Assessment (NPA).¹ The NPA itemized the proposed changes, explained that the proposed changes were based on information provided by the IRS, and stated that if appellant wanted to protest the proposed assessment, he must do so by February 4, 2019.
5. On December 24, 2018, appellant responded to the NPA by submitting a copy of his federal income tax return, apparently to substantiate appellant's argument that the federal return accurately reported income and deductions.²
6. By letter dated July 22, 2021, respondent explained to appellant that respondent did not accept the federal return as evidence that the IRS did not make the adjustments. Respondent gave appellant a copy of the federal audit information that explained the bases for the adjustments, and it asked appellant to provide information that supported his position within 30 days.
7. After appellant did not provide supporting information within 30 days, respondent issued a September 3, 2021 Notice of Action, denying appellant's protest but agreeing to abate interest that accrued from March 4, 2019 (the date it should have issued its position letter) to July 22, 2021 (the date it issued its position letter).³ This timely appeal followed.

DISCUSSION

When the IRS adjusts a California taxpayer's federal income tax liability, the taxpayer must notify respondent within six months after the date of the final federal determination by either conceding its accuracy or showing how it is inaccurate. (R&TC, § 18622(a).) There is a rebuttable presumption that the federal adjustment and determination are correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Gorin*, 2020-OTA-018P.) As relevant here, an appellant has the burden of proof as to all factual issues presented to the Office of Tax

¹ The adjustments included additions to taxable income (interest and pension or annuity income) and disallowed claimed deductions (student loan interest, medical or dental, and miscellaneous).

² Respondent refers to a "letter of protest," possibly one that accompanied the copy of appellant's federal return, but there is no such letter in our record.

³ Respondent agreed to abate interest that would otherwise have accrued during the period of time during which issuance of its position letter was delayed.

Appeals for decision, and such proof must be by a preponderance of the evidence.⁴ (Cal. Code Regs., tit. 18, § 30219(a) & (c).) To meet this evidentiary standard, the evidence must establish that it is more likely than not that the circumstances appellant asserts are correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Here, the evidence shows that the IRS audited appellant's 2015 federal return and made adjustments that increased appellant's adjusted gross income. It also shows that appellant did not inform respondent about the federal adjustments, and that respondent learned about those adjustments from the IRS. Respondent made corresponding adjustments to appellant's California income tax return and informed appellant regarding the proposed assessment based on those adjustments. Finally, respondent gave appellant an opportunity to concede the accuracy of the adjustments or, alternatively, to prove that the proposed assessment was unwarranted. Appellant did neither, so respondent took the action from which appellant now appeals.

Appellant's assertion that the proposed assessment is inconsistent with his "2015 Tax Return," while correct, is not a persuasive argument. It ignores the fact that the proposed assessment is for tax *in addition* to that reported on his return. The additional tax is based on the fact, established by the evidence, that appellant's taxable income for 2015 was more than the amount appellant reported on the return. Respondent, following the IRS's lead, adjusted the liability for income that appellant did not report and for claimed deductions that respondent (and the IRS) did not allow. Appellant has not addressed the IRS audit or any of the federal adjustments. Those adjustments are presumed to be accurate, and appellant has not rebutted that presumption. On that basis, we find that respondent correctly denied appellant's protest.

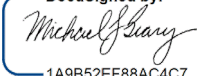
⁴ When fraud is asserted, the agency has the burden of proving it by clear and convincing evidence. (Cal Code Regs., tit. 18, § 30219(b).)

HOLDING

A reduction to the proposed assessment, which is based on a final federal adjustment, is not warranted.

DISPOSITION

Respondent’s action denying appellant’s protest of the proposed additional tax and abating interest for the period March 4, 2019, to July 22, 2021, is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 6/28/2022