

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
C. CORTINAS

) OTA Case No. 22019486
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant:

C. Cortinas

For Respondent:

Dawn Casey, Associate Operation Specialist

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Cortinas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$736¹ for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant has shown he is entitled to a refund for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant timely filed his 2017 California Resident Income Tax Return (Form 540) and timely paid the tax due as reported on the return.
2. As relevant to this appeal, FTB received information from the IRS indicating that it had audited and determined that appellant failed to include in his income certain taxable dividends and securities. The IRS included the income and increased appellant's federal adjusted gross income (AGI), resulting in additional tax due, plus interest. On

¹ The appeal before Office of Tax Appeals is based on a denial of a claim for refund of additional tax due in the amount of \$736. On appeal, appellant identifies \$845.44 as the amount at issue, which appears to reflect interest on the additional tax due, which appellant also paid. Appellant makes no specific arguments concerning interest and therefore it will not be discussed further.

- July 23, 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 and increase appellant’s California AGI to reflect the unreported income. The NPA proposed additional tax due, plus interest. Appellant did not file a timely protest and the liability became final.
 4. FTB sent billing notices to appellant for the amount due. In response, appellant wrote a letter stating that the tax due as reported on his 2017 tax return was paid, and provided a copy of his originally-filed return for the 2017 tax year. Subsequently, appellant paid the 2017 balance due in full.
 5. FTB treated appellant’s letter as a claim for refund,² and denied appellant’s claim for refund in a letter dated January 7, 2022.
 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 proving 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 appellant’s federal AGI was adjusted and increased for the 2017 tax year. To meet his burden, appellant must show that FTB’s proposed assessment is erroneous.³

² FTB references a November 19, 2021 letter that it purportedly sent to appellant indicating that FTB was treating appellant’s letter as a claim for refund. Appellant asserts on appeal that he never received FTB’s November 19, 2021 letter, and a copy of this letter is not in the record. Regardless, as discussed below, FTB’s acknowledgment letter would not change the analysis on appeal as it affects neither OTA’s jurisdiction nor the substantive issue on appeal.

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 addition and subtraction modifications.

Appellant provides no evidence to contest the final federal determination, and his sole contention on appeal is that he did not receive a copy of FTB’s November 19, 2021 letter, which FTB states acknowledged appellant’s claim for refund and provided a 30-day deadline to respond. Even if appellant did not receive the November 19, 2021 letter, appellant received the NPA, which explained the basis for FTB’s adjustment, and the state income tax balance due notices. Appellant had an opportunity to provide information contesting the determination but provided no proof of error. Appellant has not shown on appeal with credible and competent evidence that he reported the taxable dividends and securities on his 2017 California return. Accordingly, appellant has not demonstrated error in FTB’s adjustment.

HOLDING

Appellant is not entitled to a refund for the 2017 tax year.

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

DocuSigned by:
Asaf Kletter
D17AEEDCAAB045B...
Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 7/19/2022