

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
G. PARKHURST AND
L. ALTIS-PARKHURST

) OTA Case No. 21088443
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OPINION

Representing the Parties:

For Appellants: G. Parkhurst

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Parkhurst and L. Altis-Parkhurst (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,129, and applicable interest, for the 2011 tax year.

Appellants 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.)

Office of Tax Appeals Administrative Law Judge John O. Johnson held an oral hearing for this matter electronically, on May 16, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants established error in the final federal adjustments or error in FTB’s actions, which are based on those federal adjustments.

FACTUAL FINDINGS

1. Appellants timely filed their 2011 California tax return within the extension period.
2. On October 6, 2015, the IRS provided information to FTB indicating that it examined appellants' 2011 federal return. The IRS made several adjustments including an adjustment to Schedule D long-term capital gain/loss in the amount of \$650,000.
3. Appellants did not report the federal changes to FTB. Based on the federal information, FTB examined appellants' 2011 account and followed the federal action as applicable which included an adjustment to Schedule D long-term capital gain/loss in the amount of \$503,000. On November 28, 2016, FTB sent a Notice of Proposed Assessment (NPA) proposing additional tax and an accuracy-related penalty.
4. On January 27, 2017, FTB received appellants' protest letter. On April 28, 2017, FTB affirmed the NPA. On September 18, 2018, FTB received correspondence from appellants which included correspondence from the IRS indicating that the IRS made changes to appellants' federal tax liability for 2011.
5. Thereafter, on December 6, 2018, the IRS provided information to FTB that the IRS had reexamined appellants' federal tax return for 2011 and made a number of adjustments which included a Schedule D long-term capital gain/loss adjustment of \$500,000 in appellants' favor.
6. On July 20, 2021, FTB issued a Notice of Action (NOA), revising the proposed assessment based on the Schedule D long-term gain/loss adjustment of \$500,000. The NOA also removed the accuracy-related penalty.
7. Appellants timely appealed, asserting that FTB started collection activity and seized funds from their bank accounts to satisfy the proposed assessment. Appellants contend that they are entitled to a credit offset for these funds.
8. FTB issued an Order to Withhold dated February 2, 2016, to appellants' bank for the 2012 and 2013 tax years totaling \$7,978.24. As a result, FTB collected \$5,162.21.
9. According to appellant's 2011 tax account, FTB has not taken any collection activities for the 2011 tax year. In addition, the funds received from the Order to Withhold were not transferred into the 2011 tax account.

DISCUSSION

R&TC section 18622(a) requires taxpayers to report relevant federal adjustments to FTB and concede the accuracy of federal changes to their income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and taxpayers bear the burden of proving with credible, competent, and relevant evidence that FTB's determination is incorrect. (*Appeal of Valenti*, 2021-OTA-093P; *Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

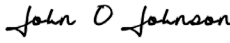
Here, appellants do not assert that the adjustments underlying the revised proposed assessment of \$2,129 is incorrect. Appellants, however, contend that FTB wrongfully levied their bank accounts for the 2011 tax year and seek a creditor offset against the balance. Appellants argue that FTB levied \$5,162.21 from their bank account and that they have overpaid an excess of \$35,000 for taxes and penalties for the 2011 and 2012 tax years. Appellants also argue that FTB wrongfully seized \$5,162.21 from their bank account in connection with collection activities involving the 2011 tax year. However, appellants' 2011 tax account does not reflect any evidence of collection activity. Further, the Order to Withhold dated February 2, 2016, relates to the 2012 and 2013 tax years and none of the funds collected from the Order to Withhold were transferred to the 2011 tax year. Although appellants ask that 2012 and 2013 tax years' activity be considered when determining this matter, the 2011 tax year is the only tax year at issue here, and therefore the levy and collection of funds related to appellants' 2012 and 2013 tax years has no bearing on the present appeal. Therefore, appellants have failed to prove error in the IRS's adjustments to their 2011 federal liability and in FTB's adjustments to their 2011 California tax liability based on the federal action.

HOLDING

Appellants have not established error in the final federal adjustments or error in FTB's actions, which are based on those federal adjustments.

DISPOSITION

FTB's action is sustained.

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John O. Johnson
Administrative Law Judge

Date Issued: 7/28/2022