

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. ESTER

) OTA Case No. 21129246
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OPINION

Representing the Parties:

For Appellant: K. Ester

For Respondent: Sarah J. Fassett, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Ester (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$966, and applicable interest, for the 2017 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.)

Office of Tax Appeals Administrative Law Judge Keith T. Long held an oral hearing for this matter electronically, on June 28, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has shown error in FTB’s proposed assessment of additional tax for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2017 California tax return. On her California tax return, appellant reported federal adjusted gross income (AGI) of \$73,776. Appellant subtracted \$15,086 from federal AGI in calculating her California tax liability.
2. According to appellant's IRS wage and income transcript, the Los Angeles County Auditor-Control issued a Form W-2 to appellant reporting wage income of \$73,776. In addition, In-Home Supportive Services (IHSS) issued a Form W-2 to appellant reporting wage income of \$15,086.
3. FTB subsequently reviewed appellant's return and concluded that appellant incorrectly subtracted \$15,086 of wage income from her federal AGI. Based on this finding, FTB issued a Notice of Proposed Assessment (NPA) on April 29, 2021, increasing appellant's taxable income by \$15,086, and proposing additional tax of \$966.
4. Appellant timely protested the NPA, explaining that the \$15,086 was from non-taxable wages paid by In-Home Supportive Services (IHSS). Appellant included a copy of her 2017 California income tax return, with additional pages.¹ Appellant also provided a Form W-2 from IHSS reporting income of \$15,086.96.
5. By letter dated August 20, 2021, FTB stated its belief that the NPA was correct. FTB explained that appellant did not add the IHSS income to the wages on her federal income tax return and therefore could not subtract them from the federal AGI reported on her California income tax return.
6. In response, appellant provided a letter from the IRS proposing an increase to her federal tax due to appellant's failure to report income of \$15,086. Appellant also provided a letter from the IRS that she provided sufficient information regarding the unreported income and that no additional federal tax is due.
7. On November 4, 2021, FTB issued a Notice of Action affirming the NPA.
8. This timely appeal followed

¹ Appellant's protest refers to this as an "amended return," however there does not appear to be any change to the calculations contained within the return.

DISCUSSION

R&TC section 17071 and 17072 define “gross income” and “adjusted gross income” by referring to and incorporating into California law Internal Revenue Code (IRC) sections 61 and 62, respectively. IRC section 61(a) states that unless otherwise provided, “gross income means all income from whatever sources derived.” Qualified foster care payments are excluded from gross income. (IRC § 131; R&TC § 17131.) IRC section 131 defines a qualified foster care payment as a payment made pursuant to a foster care program of a state or political subdivision thereof which is paid by a state or political subdivision thereof, or a qualified foster care placement agency, and which is paid to the foster care provider for caring for a qualified foster individual in the foster care provider’s home, or a difficulty of care payment.

Here, there is no dispute that appellant’s IHSS income is not subject to tax. Instead, the question is whether the IHSS income was properly subtracted from appellant’s federal AGI on the Form 540. A comparison of appellant’s 2017 federal Account Transcript to appellant’s 2017 Wage and Income transcript reveals that appellant did not report wages of \$15,086 on her federal return. Instead, appellant only included the wage income of \$73,776 from the Los Angeles County Auditor-Control in her federal AGI. In other words, appellant’s federal AGI did not include the subject IHSS income. Thus, when appellant subtracted \$15,086 from the federal AGI on her California income tax return, it amounted to a double exclusion.


Finally, appellant asserts that she previously received a notice from the IRS, which was resolved by filing an amended federal income tax return. During her protest to FTB, appellant also submitted a California income tax return form, which she identified as “amended” (the amended return). On the amended return, appellant identifies “IRS Notice 2014-7” as the reason that the IHSS income is not subject to tax. As discussed above, whether the income is subject to tax is not in dispute. However, appellant did not make any changes to her calculation of tax on the amended return. Appellant’s calculation results in an impermissible double exclusion. Accordingly, FTB’s proposed assessment is sustained.

HOLDING

Appellant has not shown error in FTB’s proposed assessment of additional tax for the 2017 tax year.

DISPOSITION

FTB’s action is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 8/1/2022