

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. SINGHAL

) OTA Case No. 21119124
)
)
)
)

OPINION

Representing the Parties:

For Appellant: J. Singhal

For Respondent: Brad J. Coutinho, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Singhal (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,842, and applicable interest, for the 2017 taxable 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 Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Has appellant established error in FTB’s proposed assessment, based on a federal determination, which includes income distributed to appellant by a retirement fund in 2017?

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return for 2017.
2. Subsequently, FTB received information from the IRS reporting that appellant’s federal income increased by \$20,961 for unreported pensions or annuities distributed by State Street Retiree Services (SSRS).

3. FTB made corresponding adjustments to appellant's 2017 California tax account and issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,842, and applicable interest.
4. Appellant protested the NPA, claiming that he had not cashed the checks issued by SSRS and therefore did not owe tax on it.
5. FTB issued a Notice of Action affirming its NPA. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's 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 a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P; *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra.*)

Appellant contends that he does not owe tax on the distributions reported by SSRS because he did not cash checks he received in 2017. In support, appellant provides on appeal copies of checks from SSRS with dates in year 2020 that appellant says he also did not cash. FTB asserts that whether or not appellant cashed the checks, he must recognize the income in the year the distributions were made.

Pursuant to Internal Revenue Code (IRC) section 402(a),¹ unless an exemption applies, any amount distributed shall be taxable to the recipient in the year it was distributed. The IRS issued guidance on taxability of IRC section 402(a) distributions in a case where a taxpayer does not actually cash the checks received. (Rev. Rul. 2019-19; 2019-36 I.R.B 674.) The Revenue Ruling confirms that whether a taxpayer cashes distribution checks or chooses not to do so, the distribution must be included (recognized) in the taxpayer's income in the year it was sent to the taxpayer. (*Ibid.*)

Appellant does not dispute that he received distribution checks from SSRS in 2017. Appellant claims that he did not cash the checks, except presumably, \$640 that appellant did claim on the 2017 return. Appellant's assertion is unsupported because the checks in OTA's

¹ California conforms to IRC section 402 with modifications not relevant to this appeal. (R&TC, §§ 17051(a), 17504.)


record are from 2020, and not the taxable year at issue here. Even if appellant provided proof that the 2017 checks were never cashed, OTA must apply the law stated above and find that the distributions made during 2017 were taxable in appellant's 2017 taxable year. Appellant does not provide any explanation for why he has not cashed distribution checks for 2017, 2018, 2019, or 2020. The fact remains that the distributions were made, and appellant could have cashed the checks in the year received. Appellant exercised control over the distribution funds and must include the amounts in 2017 taxable income.

HOLDING

Appellant has not established error in FTB's proposed assessment, based on a federal determination, which includes income distributed to appellant by SSRS in 2017.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

UCC6C6ACCC8A44D
Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/25/2022