OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. ELDRIDGE AND** **L. ELDRIDGE**	OTA Case No. 21108884

OPINION

Representing the Parties:

For Appellants: R. Eldridge and L. Eldridge

For Respondent: Anne Mazur, Specialist

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Eldridge and L. Eldridge (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of $10,118.50, an accuracy related penalty of $2,023.70,[1] and applicable interest for the 2015 tax year.

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

ISSUES

1. Whether appellants have established error in respondent's proposed assessment for the 2015 tax year, which is based on a federal determination.
2. Whether a frivolous appeal penalty should be imposed pursuant to R&TC section 19714.

FACTUAL FINDINGS

1. Appellants filed a 2015 California Resident Income Tax Return form 540 2EZ, reporting $24 of interest income, withholdings of $463, and $0 for all of the remaining fields in the

[1] On appeal, respondent concedes to remove the accuracy related penalty. As a result, this penalty is no longer at issue in this appeal.

return. Appellants requested a refund of the withholding amount, which respondent refunded. [2]

2. Subsequently, respondent received federal information that showed that the IRS adjusted appellants' joint 2015 federal income tax return. Specifically, the IRS increased appellants' adjusted gross income by $172,270.
3. Based on the federal information, respondent made conforming adjustments to appellants' 2015 California taxable income, which resulted in additional tax of $10,118.50.[3] Respondent informed appellants of the adjustment and proposed additional tax by Notice of Proposed Assessment (NPA) dated August 20, 2020.
4. Appellants timely protested the NPA.
5. Respondent affirmed the NPA by Notice of Action dated September 22, 2021.
6. This appeal followed.

DISCUSSION

Issue 1: Whether appellants have established error in respondent's proposed assessment for the 2015 tax year, which is based on a federal determination.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. It is well settled that a proposed assessment based on a federal determination is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a proposed assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

Here, respondent received information from the IRS that appellants' 2015 federal taxable income had been increased. Respondent made conforming adjustments to appellants' 2015 California taxable income, which resulted in the proposed assessment. Based on these federal

[2] On appeal, respondent states that appellants filed a zero return, which is not a valid return. As a result, respondent erroneously treated the return as a claim for refund and should not have refunded the alleged withholding amount.

[3] On appeal, respondent conceded that the proposed assessment overstated appellants' California taxable income by $23.

adjustments, respondent's proposed assessment is presumed correct, and it is appellants' burden of proof to show that the proposed assessment is erroneous.

On appeal, appellants set forth numerous constitutional arguments, argue that they are not statutorily liable for the income tax, and that respondent obtained the federal information improperly.

Appellants' contentions, and other similar arguments, have consistently been rejected by OTA's predecessor, the Board of Equalization (BOE), and by OTA as frivolous and without merit. (See, e.g., *Appeal of Balch*, 2018-OTA-159P; *Appeals of Wesley, et al*. (2005-SBE-002) 2005 WL 3106917; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924; *Appeals of Dauberger, et al*. (82-SBE-082) 1982 WL 11759.) Accordingly, OTA declines to discuss appellants' contentions further because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417 [discussing the reason courts often decline to refute frivolous taxpayer arguments with "somber reasoning and copious citation of precedent"].) Based on the foregoing, appellants have not established error in respondent's proposed assessment, which is based on a federal determination.

Issue 2: Whether a frivolous appeal penalty should be imposed.

R&TC section 19714 provides that a penalty of up to $5,000 shall be imposed whenever it appears to OTA that the proceedings before it have been instituted or maintained primarily for delay, or that the taxpayer's position is frivolous or groundless. California Code of Regulation, title 18, (Regulation) section 30217(a) provides that OTA shall impose a frivolous appeal penalty pursuant to R&TC section 19714 if it is determined that a franchise and income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay.

Regulation section 30217(b) lists the following nonexclusive factors to be considered in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether the appellant is making arguments that OTA, in a precedential opinion, or the BOE, in a precedential opinion, or courts have rejected; (2) whether the appellant is making the same arguments that the same appellant made in prior appeals; (3) whether the appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

Here, appellants are making the same arguments that have been held to be frivolous. (See Issue 1 above.) In addition, appellants received notification of the frivolous nature of their arguments in respondent's opening brief. Furthermore, respondent issued a Notice of Frivolous Return Penalty and Demand for Payment for the 2015 and 2016 tax years on October 30, 2019, and January 13, 2021, respectively, again notifying appellants of the frivolous nature of their arguments. Despite these warnings, appellants continue to pursue this appeal with the same frivolous arguments.

Although appellants have not instituted a previous appeal with OTA, the fact remains that appellants continue to bring forth frivolous arguments on appeal after receiving notification that such arguments are frivolous. Therefore, OTA imposes a frivolous appeal penalty of $1,000.

HOLDINGS

1. Appellants have not established error in respondent's proposed assessment for the 2015 tax year, which is based on a federal determination.
2. A frivolous appeal penalty in the amount of $1,000 is imposed against appellants pursuant to R&TC section 19714.

DISPOSITION

As conceded on appeal, the accuracy related penalty is removed, and appellants' California taxable income is reduced by $23, from $164,207 to $164,184. Otherwise, respondent's action is sustained and a frivolous appeal penalty of $1,000 is imposed.

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Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

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

Date Issued: 10/6/2022