

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21119098
O. BRIDGES (DEC'D))
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OPINION

Representing the Parties:

For Appellant: J. Colwell, Representative

For Respondent: Maria Brosterhous, Tax Counsel IV

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, O. Bridges (dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$758, and applicable interest, for the 2015 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.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established error in FTB's proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellant timely filed her 2015 California tax return, reporting tax due. Appellant remitted timely payment of tax due when she filed the return.
2. On March 9, 2017, appellant passed away. J. Colwell served as executor of appellant's will and trustee of appellant's revocable living trust.
3. On August 20, 2019, FTB issued a Notice of Proposed Assessment (NPA) addressed to appellant and J. Colwell, proposing additional tax of \$758, plus interest, for appellant's unreported municipal bond interest income of \$8,142 for the 2015 tax year.

4. In response, J. Cowell filed a protest letter stating that appellant passed away in 2017, her estate had been distributed, and no assets remained in the trust to pay the proposed assessment.
5. In a letter issued to J. Cowell, FTB acknowledged the protest, explained its position as to the taxation of municipal bond interest, and indicated that FTB is unable to withdraw the proposed assessment until substantiation is provided to show the proposed assessment is incorrect.
6. Subsequently, FTB issued a letter to J. Cowell, notifying him what information was required to verify the correct amount of tax. FTB acknowledged that appellant is deceased but stated that it is nevertheless required to assess the correct amount of tax, and that upon completion, the matter would be forwarded to its Special Programs – Decedent Unit, which is responsible for verifying the collectability of a decedent's tax liability.
7. FTB issued a Notice of Action, affirming the NPA.
8. This timely appeal followed.

DISCUSSION

FTB's determination is presumed correct, and a taxpayer has the burden of proving error. (*Appeal of Jindal*, 2019-OTA-372P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) FTB's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" to include "all income from whatever source derived," except as otherwise provided by statute. While IRC section 103 excludes from gross income the interest on any state or local bond, California does not, pursuant to R&TC section 17143, conform to IRC section 103. In order for interest on bonds to be excluded from California taxable income, the bonds must be issued by California or a local government in California. (R&TC, § 17133.) Appellant has provided no argument or evidence establishing that the municipal bond interest at issue meets the criteria set forth in R&TC section 17133. Office of Tax Appeals (OTA) finds that appellant has not met the burden of proof of establishing error in FTB's proposed assessment of additional tax.

To the extent that appellant contends that all the assets in the trust were distributed before issuance of the NPA and, therefore, no trust assets remain to pay the proposed assessment of additional tax, OTA has no statutory authority to settle or compromise a tax liability. While a taxpayer's financial situation may ultimately render a tax liability uncollectible, the issue of ability to pay versus determining the correct amount of the tax liability are two separate and distinct issues. (*Appeal of Robinson*, 2018-OTA-059P.) OTA's function in the appeal process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*) Therefore, OTA lacks the authority to make discretionary adjustments to a proposed assessment of tax based on a taxpayer's ability to pay.¹ (*Ibid.*)

HOLDING

Appellant has not established error in FTB's proposed assessment of additional tax.

DISPOSITION

FTB's action is sustained.

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 10/24/2022

¹ After the Opinion in this appeal becomes final, appellant's representative may wish to contact FTB's Special Programs – Decedent Unit, which is responsible for verifying the collectability of a decedent's tax liability.