

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21129291  
 M. KENAN )  
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**OPINION**

Representing the Parties:

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| For Appellant:  | M. Kenan   |
| For Respondent: | Brian Werking, Tax Counsel III<br>Nancy Parker, Tax Counsel IV |

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Kenan (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$990, 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 (OTA) Administrative Law Judge Huy “Mike” Le held a virtual oral hearing for this matter on August 30, 2022. At the conclusion of the hearing, the record was closed and OTA submitted this matter for an opinion.

**ISSUE**

Whether appellant has shown error in respondent’s proposed assessment of additional tax for the 2017 tax year, which is based on a federal adjustment.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2017 California personal income tax return. On the return, appellant did not report any early distributions from retirement accounts.
2. Subsequently, respondent received federal information showing that appellant had received an early distribution of \$22,752 from his individual retirement account (IRA).

3. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) that proposed increasing appellant's taxable income by \$22,752, among other corresponding adjustments.
4. Appellant protested the NPA.
5. Respondent issued a Notice of Action, affirming the NPA, and this timely appeal followed.

### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

Generally, early distributions from qualified retirement plans are taxable, and a 10 percent additional tax applies at the federal level on early distributions. (IRC, §§ 61(a), 72(t); R&TC, § 17081.) As relevant to this appeal, a qualified retirement plan includes an IRA. (IRC, §§ 72(t)(1), 4974(c)(4).) R&TC section 17085, in relevant parts, conforms to IRC section 72. R&TC section 17085(c) reduces the percentage of the additional tax on early distributions to 2.5 percent for California purposes.

Here, appellant received an early distribution of \$22,752 from his IRA, which is taxable and subject to the additional 2.5 percent early distribution tax under California law. Appellant argues, however, that he is unable to pay the tax liability due to his current financial condition and disability.<sup>1</sup> However, as relevant to this appeal, OTA's jurisdiction is limited to determining the correct amount of a taxpayer's California personal income tax liability. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) OTA, therefore, lacks the authority to forgive a liability or make discretionary adjustments to the amount of a tax assessment based on a

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<sup>1</sup> Although appellant testified to his difficulties at hearing, appellant has not provided evidence to support his testimony or that an exception applies. In addition, appellant stated that he made payment and sent in documents to the IRS. However, as explained at the prehearing conference and notated in OTA's Prehearing Conference Minutes and Orders, the IRS is a tax agency separate from respondent. In general, the IRS administers federal income tax obligations, while respondent administers California income tax obligations.

taxpayer’s ability to pay.<sup>2</sup> (*Appeal of Estate of Luebbert, Deceased, and Luebbert* (71-SBE-028) 1971 WL 2708.)

HOLDING

Appellant has not shown error in respondent’s proposed assessment of additional tax for the 2017 tax year, which is based on a federal adjustment.

DISPOSITION

OTA sustains respondent’s action in full.

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Huy “Mike” Le  
Administrative Law Judge

Date Issued: 10/10/2022

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<sup>2</sup> Respondent included FTB Form 4905 (Offer in Compromise for Individuals) and FTB Form 3567 (Installment Agreement Request) in its brief. Appellant may contact respondent if he wishes to pursue an offer in compromise or seek to set up an installment payment plan after this appeal is final.