

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

In the Matter of the Appeal of: ) OTA Case No. 220410090  
L. KEARNEY AND )  
M. KEARNEY )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: L. and M. Kearney  
For Respondent: Andrea Watkins, Legal Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Kearney and M. Kearney (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,110, and applicable interest, for the 2017 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants have shown error in FTB’s assessment, which is based on a federal determination.

**FACTUAL FINDINGS**

1. Appellants filed a timely California Resident Income Tax Return for the 2017 tax year.
2. FTB processed the return and issued a refund as requested.
3. FTB then received information from the IRS that it increased appellants’ federal taxable income by interest income of \$89, non-employee compensation of \$10,070, and other income of \$24,000, and allowed a self-employment tax deduction of \$712, resulting in a total adjustment of \$33,447. The IRS assessed additional tax of \$9,967.

4. Appellants did not report the federal adjustments to FTB. FTB issued a Notice of Proposed Assessment (NPA), following the federal adjustments and increasing appellants' 2017 taxable income by \$34,115 for a total additional proposed tax of \$3,110 plus interest.
5. FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.

#### DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) 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.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Here, FTB received information from the IRS that appellants' federal AGI was adjusted and increased for the 2017 tax year. To meet their burden, appellants must show that FTB's proposed assessment is erroneous. Appellants' only argument is that they already paid the IRS and they cannot afford to pay the FTB.<sup>1</sup> Appellants had an opportunity to provide information contesting the determination, but provided no proof of error. Appellants have not shown on appeal with credible and competent evidence that they reported the additional income on their 2017 California return. Accordingly, appellants have not demonstrated error in FTB's adjustment, which is based on a federal determination.

---

<sup>1</sup> Appellants may seek appropriate relief directly from FTB when this appeal is concluded, such as an installment payment plan or an Offer in Compromise.

HOLDING

Appellants have not shown error in FTB’s assessment, which is based on a federal determination.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:  
*Sara A. Hosey*  
-----  
6D3FE4A0CA514E7...  
Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Huy "Mike" Le*  
-----  
A11783A0D49442B...  
Huy "Mike" Le  
Administrative Law Judge

DocuSigned by:  
*Eddy Y.H. Lam*  
-----  
1EAB8F0A3324477...  
Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 10/24/2022