

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
Z. FIELDS

) OTA Case No. 20116902
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OPINION

Representing the Parties:

For Appellant:

Z. Fields

For Respondent:

Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals:

Lily Lequang, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Z. Fields (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$537, and applicable interest, for the 2017 tax year.

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

ISSUE

Whether appellant has shown error in respondent’s proposed assessment, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely 2017 California Resident Income Tax Return. Appellant claimed the head of household (HOH) filing status and listed two nieces and a nephew as dependents. On the return, appellant reported an Earned Income Tax Credit (EITC) of \$537 and a refund due of \$537. Appellant included the HOH Filing Status Schedule (Form 3532) with her return but did not complete the section regarding her marital status.
2. On March 23, 2018, respondent remitted the refund amount of \$537 to the IRS as an agency offset payment.

3. Subsequently, respondent received information from the IRS indicating that the IRS adjusted appellant's 2017 federal return by changing appellant's filing status from HOH to single, applying the standard deduction for a single individual, and disallowing the EITC, among others.
4. Respondent issued to appellant a Notice of Proposed Assessment (NPA) reflecting the federal adjustments allowed to the extent applicable under California law. The NPA revised appellant's taxable income to \$4,236, changed her filing status to single, reduced her personal exemption credit to \$114, disallowed the claimed EITC, and assessed an additional tax of \$537, plus applicable interest.
5. Appellant protested the NPA. Appellant stated that the initial disallowance of her HOH filing status had subsequently been reversed by the IRS and that she had been provided the full refund indicated on her return. Appellant requested that respondent recalculate her taxes, provide her a refund based on the HOH filing status, and issue a corrected NPA.
6. Respondent issued a Notice of Action to appellant affirming the NPA.
7. This timely appeal followed.

DISCUSSION

Taxpayers must either concede the accuracy of a federal determination or state why it is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct, and taxpayers bear the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy taxpayers' burden of proof with respect to a determination based on federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that the respondent's determination is incorrect, it must be upheld. (*Appeal of Valenti*, 2021-OTA-093P.) Taxpayers' failure to produce evidence within his or her control gives rise to a presumption that such evidence is unfavorable to their case. (*Appeals of Kwon, et al.*, 2021-OTA-296P.)

OTA gave appellant an opportunity to provide additional documentation to show that the IRS has revised or modified its assessment. Appellant submitted a letter from the IRS to appellant, stating that the IRS will not conduct an examination for the period ending December 31, 2019. This letter does not indicate what actions, if any, the IRS took for the 2017 tax year, which is the year at issue in this appeal. In addition, appellant's 2017 federal Account

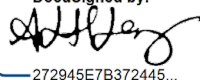
Transcript does not indicate that the IRS revised or withdrew its original determination. Instead, it shows that the IRS denoted appellant’s filing status as single and removed the amounts for the Child Tax Credit, the EITC, and the self-employment tax from appellant’s 2017 tax account. Absent such evidence, appellant has not established any error in respondent’s proposed assessment.

HOLDING

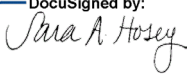
Appellant has not shown error in respondent’s proposed assessment for the 2017 tax year, which is based on a final federal determination.

DISPOSITION

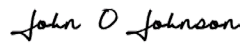
Respondent’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:
DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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John O. Johnson
Administrative Law Judge

Date Issued: 11/17/2022