

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22019456
C. GAYTAN AND)
K. GAYTAN)
_____)

OPINION

Representing the Parties:

For Appellants: C. Gaytan and K. Gaytan

For Respondent: Noel Garcia, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Gaytan and K. Gaytan (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,764 and applicable interest for taxable year 2017.¹

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

ISSUE

Have appellants established error in FTB’s proposed assessment that is based on federal adjustments for taxable year 2017?

¹ In their appeal letter, appellants state that they mailed a check to FTB for the amount listed on the Notice of Action, and request that this appeal be converted to an appeal based on a claim for refund. (See R&TC, § 19335.) FTB does not confirm receiving this payment or that the payment entirely satisfies the proposed assessment and accrued interest. OTA addresses the action here as an appeal from a proposed assessment but notes that the Holding and Disposition still apply if this matter has converted to an appeal from a claim for refund action.

FACTUAL FINDINGS

1. Appellants filed a timely 2017 California tax return.
2. FTB received information from the IRS that appellants had received, but not reported, \$29,716 in taxable pension or annuity distributions.²
3. FTB made corresponding adjustments to appellant's gross income and issued a Notice of Proposed Assessment (NPA) proposing to assess \$2,764 in additional tax, plus interest.
4. Appellants protested the NPA claiming that the retirement distribution was rolled over to another qualified retirement account and was never distributed to them.
5. Appellants did not submit supporting documentation to FTB, and FTB issued a Notice of Action affirming its NPA.
6. Appellants timely appealed and made the same argument to OTA as they had to FTB. OTA held a teleconference and thereafter gave appellants 60 days to submit evidence supporting a rollover of the \$29,697 distribution. Appellants did not submit any additional evidence following the teleconference.

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 federal adjustments is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

Gross income means all income from whatever source derived, unless specifically excluded. (Internal Revenue Code (IRC), § 61(a).)³ Generally, a distribution from a qualified retirement plan is included in income for the year of distribution. (IRC, §§ 402(a), 408(d).)⁴ Deductions from gross income are a matter of legislative grace, and a taxpayer has the burden of proving entitlement to the deductions claimed. (*New Colonial Ice Co. v. Helvering* (1934)

² The IRS information showed that appellants also underreported \$19 in interest income. Appellants clarified at a teleconference with OTA that they do not dispute this adjustment. Therefore, only the \$29,697 pension or annuity distribution adjustment is discussed in this Opinion.

³ California conforms to IRC section 61 pursuant to R&TC section 17071.

⁴ California conforms to IRC sections 402 and 408 pursuant to R&TC section 17501(a).

292 U.S. 435; *Appeal of Dandridge*, 2019-OTA-458P.) To carry the burden of proof, a taxpayer must point to an applicable statute and show by credible evidence that the deductions claimed come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

Here, FTB obtained information from the IRS that appellants' joint 2017 federal taxable income had been increased based on a distribution of \$29,697 made by Transamerica Retirement to appellant-husband. FTB made conforming adjustments to appellants' joint 2017 California taxable income, which resulted in the proposed assessment. Because it is based on these federal adjustments, FTB's proposed assessment is presumed correct. Therefore, it is appellants' burden of proof to show that the proposed assessment is erroneous.

On appeal, appellants argue that they never received the distribution and that, instead, appellant-husband's employer was acquired by another company. Appellants assert that the appellant-husband's 401(k) was automatically rolled over into a qualified account with the new company. (See IRC, § 402.)

FTB counters that appellants have not submitted evidence showing the funds were rolled over, and that the evidence indicates that it was not. The distribution code reported by Transamerica Retirement, as shown on appellants' federal Wage and Income Transcript, reports that an early distribution was made with no known exception and that the entire distribution is taxable. Furthermore, appellants' federal Account Transcript shows that as of January 28, 2022, the IRS had not reduced appellants' federal adjusted gross income by \$29,697 or by any other amount.

On appeal, OTA held a teleconference wherein appellants agreed that they would provide to OTA, with a copy to FTB, documentation supporting a rollover to a qualified account with appellant-husband's new employer. Specifically, "Appellants agreed to obtain and submit documentation showing that \$29,697 was rolled over into a qualified retirement account. Appellants will seek this documentation from appellant-husband's current employer (Phillips) and/or the plan administrator for the qualified retirement account."


Appellants did not respond to the Minutes and Orders issued by OTA following the teleconference and did not submit additional documentation. Therefore, appellants have failed to establish error in FTB's determination.

HOLDING

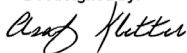
Appellants have not established error in FTB’s proposed assessment which is based on federal adjustments for taxable year 2017.

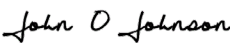
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

0CC8C8ACCC8A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:

873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 11/22/2022