

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
G. OLEGARIO

) OTA Case No. 22019571
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OPINION

Representing the Parties:

For Appellant: G. Olegario

For Respondent: Eric R. Brown, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Olegario (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,334 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 demonstrated error in FTB’s proposed assessment, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return for the 2017 tax year.
2. Appellant turned 60 years old in December 2017.
3. The IRS audited appellant’s 2017 federal income tax return and adjusted appellant’s income, which resulted in a tax deficiency. Specifically, the IRS adjusted the federal return for unreported income totaling \$23,966, which includes, among other things, \$15,870 of unreported pension or annuities income.
4. Thereafter, FTB issued a Notice of Proposed Assessment (NPA), which proposed the same adjustments as the final federal determination.

5. Appellant timely filed a protest of the NPA, stating that the pension or annuities income of \$15,870 is already reported on line 15b (taxable amount for pensions and annuities) of her 2017 federal tax return.¹
6. FTB issued a Notice of Action affirming the NPA in its entirety.
7. As relevant to this appeal, appellant's Wage and Income Transcript for the 2017 tax year from the IRS reported that appellant received taxable pension or annuities income. National Financial Services, LLC issued two separate Form 1099-Rs in the same amount of \$9,330 each, but with different distribution codes.² RiverSource Life Insurance Company also issued two separate Form 1099-Rs in the same amount of \$6,540 each, but with different distribution codes.³ The differences in distribution codes were a result of appellant being under the age of 59 ½ years old for about half of the 2017 tax year.
8. Appellant then timely filed this appeal.

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 federal adjustments to income is presumed to be correct, and a taxpayer bears the burden of proving that FTB's determinations are erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, such determinations must be upheld. (*Appeal of Valenti*, *supra*.)

¹ \$9,330 from National Financial Services, LLC + \$6,540 from RiverSource Life Insurance Company = \$15,870.

² The first Form 1099-R issued by National Financial Services, LLC reflects a distribution code of "1," indicating "Early Distribution, no known exception (in most cases, under age 59 ½)." The second Form 1099-R issued by National Financial Services, LLC reflects a distribution code of "7," indicating "Normal Distribution."

³ The first Form 1099-R issued by RiverSource Life Insurance Company reflects a distribution code of "2," indicating "Early Distribution, exception applies (Under age 59 ½)." The second Form 1099-R issued by RiverSource Life Insurance Company reflects a distribution code of "7," indicating "Normal Distribution."

Here, FTB received information from the IRS that appellant's taxable income increased for the 2017 tax year because of unreported annuities or pension income.⁴ Appellant specifically argues that the IRS's adjustment for the unreported taxable pension or annuities income in the amount \$15,870 is erroneous. Appellant provides evidence that this amount was already reported on line 15b of her 2017 federal tax return.

However, appellant's line 15b of the 2017 federal tax return does not show that FTB's proposed assessment, which is based on a final federal determination, was made in error. Here, appellant reported only half of the total taxable distributions received from National Financial Services, LLC and RiverSource Life Insurance Company for the 2017 tax year. According to evidence from the record, National Financial Services, LLC and RiverSource Life Insurance Company each reported two separate distributions because half of the total distributions received by appellant in 2017 were made when appellant was under the age of 59 ½ and the other half were made when appellant was over the age of 59 ½. Appellant did not provide any evidence that the distributions were erroneously reported as separate distributions. Therefore, appellant has not shown on appeal with credible and competent evidence that FTB's proposed assessment is erroneous. Accordingly, appellant has not demonstrated error in FTB's adjustment, which is based on a final federal determination.

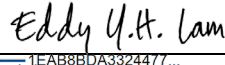
⁴ For 2017 tax year, California conforms to the January 1, 2015 version of the Internal Revenue Code (IRC). R&TC section 17071 incorporates IRC section 61, which defines "gross income" as "all income from whatever source derived," including pension and annuity income. (IRC, § 61(a)(9), (11).) Therefore, California's conformity to IRC section 61 generally requires that a resident of this state who receives distributions from a retirement plan must include those amounts in gross income for California purposes.

HOLDING

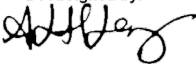
Appellant has not demonstrated error in FTB’s proposed assessment, which is based on a final federal determination.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:

Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

Teresa A. Stanley
Administrative Law Judge

Date Issued: 11/17/2022