

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**P. CARNEVALE**

) OTA Case No. 22039843  
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**OPINION**

Representing the Parties:

For Appellant: P. Carnevale

For Respondent: David Muradyan, Tax Counsel III

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Carnevale (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$752 for 2013, \$814 for 2014, and \$528 for 2015, plus applicable interest.

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

**ISSUE**

Whether appellant has established error in FTB’s proposed assessments of additional tax, which is based upon federal adjustments.

**FACTUAL FINDINGS**

1. The IRS examined appellant’s business expenses reported on Schedule C of his federal income tax returns for 2013, 2014, and 2015. The IRS disallowed certain business expenses. Thereafter, the IRS sent FTB an audit report detailing its determination.<sup>1</sup>
2. On October 4, 2018, FTB issued appellant Notices of Proposed Assessment (NPAs) for the 2013, 2014, and 2015 tax years based on information it received from the IRS. The

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<sup>1</sup> A copy of the IRS audit report is not in the written record.

NPAs proposed additional tax of \$752 for 2013, \$814 for 2014, and \$528 for 2015, plus applicable interest.

3. On December 5, 2018, appellant filed a protest with FTB.<sup>2</sup>
4. FTB reports that effective December 14, 2018, appellant made payments of \$863.58, \$907.15, and \$571 to FTB.<sup>3</sup>
5. On October 7, 2021, FTB sent appellant a determination letter.
6. On January 21, 2022, FTB issued Notices of Action (NOAs) for the 2013, 2014, and 2015 tax years.
7. On February 22, 2022, appellant timely appealed to the Office of Tax Appeals (OTA).

### DISCUSSION

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

Appellant argues that he did not receive a copy of FTB’s October 7, 2021 letter, as referenced in FTB’s January 21, 2022 NOAs. Appellant states that “[i]t is remarkably unfair to tell us we owe back taxes, again, for the same years, and charge us interest on such tax when we never knew we owed it.”<sup>4</sup>

Here, appellant appears to misunderstand; the taxes referenced in FTB’s January 21, 2022 NOAs are the same taxes, and interest, that he has already paid effective December 14, 2018. As explained in FTB’s determination letter, the NOAs do not reflect appellant’s payments of \$863.58, \$907.15, and \$571.00 because the NOAs are not final due to this OTA appeal. After the NOAs become final and the corresponding suspense payments are applied, appellant will not be required to pay additional amounts because the suspense payments will satisfy the tax due and

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<sup>2</sup> A copy of the protest is not in the written record, but appellant’s contentions are paraphrased in FTB’s briefing.

<sup>3</sup> Pending the outcome of appellant’s appeal, FTB has held those funds in a suspense status.

<sup>4</sup> At the direction of the lead administrative law judge, OTA staff attempted to schedule a conference with the parties to further clarify appellant’s contentions. Appellant did not respond to the e-mail or telephone calls to schedule a conference.

related interest.<sup>5</sup> Nonetheless, appellant has not provided any evidence to meet his burden of proof to show that the determination is erroneous. As such, OTA finds appellant has failed to meet his burden.

HOLDING

Appellant has not established error in FTB’s proposed assessment of additional tax, which is based on final federal adjustments.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

We concur:

DocuSigned by:  
*Huy “Mike” Le*  
A11783ADD49442B...  
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Huy “Mike” Le  
Administrative Law Judge

DocuSigned by:  
*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

Date Issued: 11/29/2022

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<sup>5</sup> FTB indicates that as of May 5, 2022, the tax due for 2014 is zero. For the 2013 and 2015 tax years, FTB will apply the payments held in suspense to the tax due which will result in a zero balance.