

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22039972
D. ADKISSON AND)
M. ADKISSON)
_____)

OPINION

Representing the Parties:

For Appellants: D. Adkisson

For Respondent: Eric R. Brown, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Adkisson and M. Adkisson (appellants) appeal an action by Franchise Tax Board (respondent), proposing additional tax of \$1,943 and applicable interest for the 2017 taxable year.

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

ISSUE

Whether respondent’s action, which is based on an IRS examination, is erroneous.

FACTUAL FINDINGS

1. Appellants’ 2017 federal income tax return was examined by the IRS, which resulted in an increase of \$38,395 in adjusted gross income (AGI). The increase was due to unreported income from Lyft, First Meridian Care Services, and DeVry University. The IRS did not cancel or modify its \$38,395 AGI adjustment.
2. Respondent made corresponding adjustments to appellants’ 2017 California personal income tax return (Form 540) and issued a Notice of Proposed Assessment (NPA), which it subsequently affirmed.

DISCUSSION

When the IRS makes changes to a taxpayer's federal tax return, the taxpayer must report those changes to respondent, and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions by taxpayers are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*)

Here, respondent issued its NPA based on a final federal determination, and thus, respondent's proposed assessment is presumptively correct. (*Appeal of Gorin, supra.*) Appellants do not argue, and the evidence does not suggest, that respondent erred in its adjustments to appellant's income for the 2017 taxable year. However, appellants explain that they forgot to report some "funds" or "taxes" and that Lyft failed to upload information to Turbo Tax, resulting in penalties. Appellants also inquire as to whether credits/refunds from other taxable years were applied to the 2017 proposed deficiency.

The record shows that no penalties were imposed on appellants. Instead, respondent increased appellants' California AGI in the same manner as the IRS did with appellants' federal AGI. Because appellants do not dispute that the income at issue was omitted from their 2017 Form 540, they have not met their burden of proof that respondent's adjustments were erroneous. Furthermore, appellants did not provide any evidence of available refunds and/or credits from other taxable years that could be applied to the 2017 taxable year and, therefore, cannot be taken into consideration. (See *Appeal of Gorin, supra.*)

HOLDING

Respondent’s action is correct.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 12/2/2022