

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. TORRES

) OTA Case No. 220410161
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OPINION

Representing the Parties:

For Appellant: G. Torres

For Respondent: Andrea Watkins, Legal Assistant

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Torres (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,989,¹ 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 of additional tax, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely 2017 California tax return.
2. Subsequently, respondent received information from the IRS indicating that the IRS had adjusted appellant’s 2017 federal return by including interest income of \$25, pension/annuity income of \$42,997, merchant card income of \$2,872, and also allowed a

¹ Respondent initially assessed additional tax of \$2,143. Respondent subsequently agrees to abate (withdraw) the \$2872 adjustment for merchant card income and to withdraw the related \$406 self-employment tax credit adjustment, which revises the proposed additional tax to \$1,989.

- \$406 increase to appellant's self-employment tax deduction, which resulted in a total adjustment of \$45,488.
3. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellant's 2017 California return. The NPA proposed additional tax of \$2,143, plus applicable interest.
 4. Appellant protested the NPA asserting that appellant was unable to pay due to financial hardship.
 5. In response, respondent issued a letter acknowledging appellant's protest and explaining respondent's position regarding the NPA – that the NPA adjustments were based on IRS information provided to respondent by the IRS. Respondent invited appellant to submit any additional information for respondent to consider within 30 days.
 6. After receiving no further information, respondent issued a Notice of Action, affirming the NPA.
 7. Appellant filed this timely appeal.

DISCUSSION

A taxpayer must either concede the accuracy of a federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumed to be correct. (*Appeal of Gorin*, 2020-OTA-018P.) The taxpayer bears the burden of proving that the determination is erroneous. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) Further, a taxpayer's failure to provide evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Bindley*, 2019-OTA-179P).

Appellant contends that \$1,100 was taken from her 2021 tax refund and applied to appellant's 2017 tax but asserts that this is not reflected in respondent's proposed tax calculation. Appellant further asserts that she cannot pay the proposed tax assessment due to financial hardship and asks that the liability be forgiven.

Appellant has failed to provide evidence that shows error in the federal adjustments or respondent's determination based on those adjustments. With regard to the allegation that \$1,100 was taken from appellant's 2021 refund, respondent has submitted appellant's 2017 Federal Account Transcript, which indicates that the IRS applied \$1,111 from the 2020 tax year

to appellant's 2017 federal tax liability. However, regarding the 2017 California tax return at issue, appellant received a refund of \$1,290.89 from respondent, and there is no indication in the record that any additional amount from the 2017 tax year was credited to another tax year.

Regarding appellant's arguments that she is unable to pay the liability, respondent has statutory authority to settle disputed liabilities with the taxpayer and to compromise certain final liabilities. (R&TC, §§ 19442, 19443.) The Office of Tax Appeals (OTA), on the other hand, has no statutory authority to settle a disputed tax liability or to compromise a tax liability. Further, OTA has no jurisdiction over respondent's settlement, installment agreement, or offer in compromise programs. OTA's function is to determine the correct amount of a taxpayer's California income tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) While OTA is cognizant that a taxpayer's financial situation may ultimately render a liability uncollectible, the question of ability to pay versus that of determining the correct amount of the tax liability are two separate and distinct concepts. OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Ibid.*)

Therefore, based on the evidence presented to OTA, appellant has not provided a basis upon which OTA can adjust the amount of the proposed assessment.

HOLDING

Appellant has not shown error in respondent’s proposed assessment of additional tax, which is based on a federal determination.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

Date Issued: 12/8/2022