OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: **J. CHOI**	OTA Case No. 220610586

OPINION

Representing the Parties:

For Appellant: J. Choi

For Respondent: Andrea Watkins, Legal Assistant

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Choi (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $3,788, plus applicable interest, for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Is appellant entitled to a reduction of the proposed assessment for the 2017 tax year?

FACTUAL FINDINGS

1. On October 15, 2018, appellant timely filed a California Resident Income Tax Return, reporting overpaid tax of $14,070, which respondent refunded to appellant.
2. After issuing the refund, the respondent received information from the IRS that it had made adjustments to appellant's 2017 account, increasing appellant's federal taxable income by $36,887, consisting of $523.00 in interest income and $36,364.00 in taxable dividend income, both of which had been omitted from appellant's federal return. Appellant did not report the adjustment to respondent.

3. Respondent issued a January 21, 2021 Notice of Proposed Assessment (NPA) to appellant. The NPA indicated that appellant's taxable income had been increased by $39,838, which increases included the $523 federal increase to appellant's interest income, the $36,364 federal increase to appellant's taxable dividends, but also included a $738 reduction to appellant's allowed Schedule A miscellaneous deductions, and a $2,213 reduction to appellant's itemized deductions.[1] The adjustments resulted in a tax increase totaling $3,788.
4. By letter dated March 22, 2021, appellant acknowledged receipt of the NPA and informed respondent that the IRS was then considering appellant's request for a reduction to the taxable income increase on the grounds that the IRS had taxed the additional dividends at the ordinary dividend rate rather than at the more favorable (to the taxpayer) qualified dividend rate. Appellant requested additional time to allow the IRS to complete its review. Respondent treated the letter as a protest and by letter dated July 20, 2021, informed appellant that if appellant did not provide evidence within 60 days to show that appellant was entitled to a reduction to the taxable income increase, respondent would issue a Notice of Action (NOA) affirming the NPA.
5. On May 31, 2021, the IRS reduced appellant's taxable dividend income by $4,727 (hereinafter, "second adjustment").
6. By letter dated December 17, 2021, respondent informed appellant that respondent's records showed that the IRS had completed its review of appellant's 2017 tax year. The letter informs appellant that if evidence of a further adjustment by the IRS was not provided within 30 days, respondent would affirm the NPA.
7. Having received no further information from appellant, respondent issued the NOA on May 11, 2022.
8. This timely appeal followed.

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. In other words, a deficiency assessment

[1] The reduction to appellant's claimed itemized deductions was the result of California not conforming to the IRC section 68 adjusted gross income (AGI) limitations on itemized deductions. California's AGI limitations are lower.

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.) Likewise, respondent's factual determinations are presumed to be correct, and a taxpayer must provide credible evidence to prove otherwise. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

R&TC section 17071 generally conforms to Internal Revenue Code (IRC) section 61, which defines "gross income" to include dividends. (IRC, § 61(a)(7).) The IRS allows a preferential tax treatment for "qualified dividends," which are taxed at a lower rate than the ordinary income rate. (IRC, § 1(h)(11)(A).) However, California does not allow such preferential treatment and taxes all dividends as ordinary income.

Respondent's position is that the IRS made the second adjustment because it agreed with appellant that the previously unreported dividends were qualified dividends and thus subject to the federal preferential tax rate. Respondent notes that this is the argument appellant had made to the IRS, and is also consistent with the evidence, which shows that the IRS Form 1099-DIV identifies the income as qualified dividends[2] and that appellant's federal adjusted gross income was not changed by the final federal adjustment.

Appellant did not reply to respondent's brief and has not argued that respondent's position is wrong. Although appellant's brief included a copy of an IRS letter confirming the second adjustment, there is nothing in the record that indicates – or even suggests – that the second adjustment was the result of something other than application of the federal preferential tax rate to appellant's qualified dividends. OTA thus finds that the second adjustment did not change appellant's federal adjusted gross income or have any effect on appellant's California

[2] A payor of dividends uses the Form 1099-DIV to report taxpayers' dividends to the IRS.

taxable income. Furthermore, given appellant's failure to offer any argument or evidence against the other changes made by respondent,[3] OTA finds that those were also correct.

Consequently, appellant is not entitled to a reduction of the proposed assessment for the 2017 tax year.

HOLDING

Appellant is not entitled to a reduction of the proposed assessment for the 2017 tax year.

DISPOSITION

Respondent's NOA is sustained.

DocuSigned by:
1A9B52EF88AC4C7...

Michael F. Geary
Administrative Law Judge

Date Issued: 12/23/2022

[3] Respondent notes in its brief that appellant did not appear to object to the additional interest income ($523), the reduction to the Schedule A deductions ($738), or the application of California's AGI limitation on itemized deduction ($2,213). Appellant has not responded to disagree or to take any position regarding those adjustments.