

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. KNIGHT

) OTA Case No. 21017172
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OPINION

Representing the Parties:

For Appellant: D. Knight

For Respondent: Joel Smith, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Knight (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,488 and applicable interest for the 2015 tax year.

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

ISSUE

Has appellant established error in FTB’s proposed assessment for the 2015 tax year, which is based on a final federal determination?

FACTUAL FINDINGS

1. Appellant timely filed her 2015 California tax return, claiming total itemized deductions of \$33,709, and reporting a refund due of \$1,024. FTB processed appellant’s return and issued her a refund of \$1,024 on April 21, 2016.
2. Subsequently, FTB received information that the IRS audited appellant's 2015 federal tax return and made adjustments disallowing appellant's federal itemized deductions and allowing the federal standard deduction instead. The federal adjustments resulted in IRS assessing additional tax. Appellant did not notify FTB of the final federal adjustments.

3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellant's 2015 California tax return. FTB disallowed appellant's itemized deductions and applied the standard deduction, and issued appellant a Notice of Proposed Assessment (NPA) dated August 22, 2019. The NPA proposed additional tax of \$2,488, plus interest.
4. On October 21, 2019, appellant protested the NPA, stating she was waiting for IRS documents, that she disagreed with the proposed assessment, and was making a "tax deposit."
5. Appellant made a payment of \$2,800.42 for the 2015 tax year on October 21, 2019.
6. In response, FTB sent appellant a letter dated September 28, 2020 (Response to Protest), explaining that since the IRS disallowed Schedule A (Form 1040) itemized deductions in full, FTB disallowed the amount of those deductions and applied the standard deduction instead. FTB noted that information from the IRS did not show that the federal adjustment was canceled or reduced. FTB stated that if appellant still disagreed with FTB's position, appellant should provide a copy of a federal account transcript that shows a federal taxable income amount of less than \$60,303.
7. FTB also stated in its Response to Protest that it erroneously sent a refund to appellant dated July 10, 2020, for the 2015 tax year in the amount of \$2,898.67. FTB asked appellant to return the check or repay the check amount, and informed appellant that interest would be charged on any amount unpaid after 30 days from the date of its letter.
8. When FTB did not receive a response to its letter, it issued a Notice of Action, dated December 29, 2020, affirming the NPA.¹
9. Appellant then filed this timely appeal.

¹ A few weeks prior to issuing the Notice of Action, FTB issued a State Income Tax Balance Due Notice (Notice) to appellant on December 7, 2020, informing her that as of December 1, 2020, she had a balance of \$98.79 for tax year 2015. FTB does not address the Notice in its brief, but upon review of the evidence in the record by Office of Tax Appeals (OTA), it appears that on October 28, 2020, FTB erroneously refunded appellant the tax deposit of \$2,800.42 she had made on October 21, 2019. In addition, the erroneous refund was in the amount of \$2,898.67, \$98.25 more than the payment appellant had made.

OTA surmises that the Notice was intended to collect the \$98.25 difference, plus applicable interest. Appellant responded to the Notice by paying \$99.33 on January 27, 2021. Since appellant's payment was included as a credit on her 2015 tax year, and may indicate a collection issue, over which OTA does not have jurisdiction, this Opinion will not explore this further. (Cal. Code Regs., tit. 18, §§ 30103(a), 30104.)

10. An IRS Account Transcript for 2015, dated February 25, 2021, does not show any changes to the federal adjustment, or show that the IRS is reviewing appellant's 2015 tax return.

DISCUSSION

A taxpayer shall either concede the accuracy of a final federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*; see also Cal. Code Regs., tit. 18, § 19059.) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, such determination must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.)

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing entitlement to the deductions claimed. (*Appeal of Vardell*, 220-OTA-190P, citing *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To meet this burden, a taxpayer must point to an applicable statute authorizing the deduction and show by credible evidence that the deduction claimed falls within the scope of the statute. (*Appeal of Dandridge*, 2019-OTA-458P; *Appeal of Jindal*, 2019-OTA-372P.)

For the 2015 tax year, appellant claimed itemized deductions, which the IRS, and subsequently FTB, disallowed. In order to prevail in this appeal, appellant must show that either the IRS canceled or revised its determination that the itemized deductions were disallowed, or that, regardless of the federal action, appellant is entitled to the itemized deductions.

Appellant contends that the IRS adjustment denying her itemized deductions was in error, and that she requested taxpayer assistance with the IRS as well as her 2015 transcript “to try and figure out what is going on.” Other than her contention that the IRS adjustment upon which FTB relied was in error, appellant provides no substantive arguments contending that FTB's proposed assessment is in error. Appellant has not proffered evidence to establish that she is entitled to the itemized deductions. The February 25, 2021 IRS Account Transcript does not show that the

federal determination has been canceled or revised, and appellant has not provided any evidence to show that the IRS is re-examining her 2015 tax return and that the federal determination is not final. Thus, appellant has not met her burden of proving error in FTB’s proposed assessment for 2015, or in the federal determination upon which FTB based its proposed assessment.

HOLDING

Appellant has not established error in FTB’s proposed assessment for the 2015 tax year, which is based on a final federal determination.

DISPOSITION

FTB’s action is sustained.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

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Andrew J. Kwee
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Andrew J. Kwee
Administrative Law Judge

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

Date Issued: 2/13/2023