

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. KRUPER**

) OTA Case No. 21027264  
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**OPINION**

Representing the Parties:

For Appellant: R. Kruper

For Respondent: Paul L. Kim, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Kruper (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,411 and applicable interest, for the 2010 tax year.<sup>1</sup>

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 assessment of additional tax for the 2010 tax year which was based on a final federal determination.

**FACTUAL FINDINGS**

1. Appellant timely filed his 2010 income tax returns (federal and California).
2. The IRS audited appellant’s 2010 federal income tax return. The IRS made adjustments to appellant’s income, which increased his 2010 taxable income.
3. FTB received information regarding the federal adjustments. Based upon this information, FTB issued a Notice of Proposed Assessment (NPA) for the 2010 tax year. FTB adjusted appellant’s California taxable income by a total of \$215,159, which

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<sup>1</sup> FTB withdrew its proposed assessment for the 2009 tax year. FTB also abated the accuracy-related penalty it had previously imposed for the 2010 tax year. Thus, OTA need not address these issues.

- resulted in income tax due of \$25,845. FTB applied appellant's previously assessed and paid tax of \$5,193 for a proposed additional tax of \$20,652.
4. Appellant protested FTB's NPA.
  5. FTB issued a Notice Action (NOA) affirming its position.
  6. Appellant timely appealed the NOA. Included therewith, appellant provided an unsigned copy of the *STIPULATION BETWEEN THE DEBTOR AND THE UNITED STATES OF AMERICA REGARDING THE DEBTOR'S OBJECTION TO PROOF OF CLAIM #2 FILED BY THE INTERNAL REVENUE SERVICE* (Stipulation).
  7. FTB obtained a copy of the revised revenue agent report (Form 5278) memorializing adjustments relating to the Stipulation. It also obtained a copy of appellant's federal Account Transcript for the 2010 tax year (Account Transcript). FTB reduced the additional tax for the 2010 year to \$4,411 based on the additional information.
  8. This timely appeal follows.

#### DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Appellant argues that he has tried to provide FTB with the necessary supporting documents relating to "this mishap that caused all this mess." Appellant attributes his tax issues to a legal battle with his ex-business partner. Appellant states that he was forced to file for bankruptcy in 2013 because of the legal issues. Appellant asserts that during the bankruptcy his attorney, Mr. Warner, and the Assistant United States Attorney of the Tax Division, Ms. Brown, investigated the 2009 and 2010 tax years and found that corrections were warranted.

Accordingly, appellant asserts that the Stipulation shows that the amount owed for 2010 is \$6,675, as claimed in full. Essentially, appellant contends that FTB's proposed assessment is in error as the IRS agreed to a reduced assessment as supported by the Stipulation.

Here, FTB made adjustments to the additional tax amount consistent with the information contained in appellant’s Account Transcript, the Stipulation, and the Form 5278. OTA notes that the Stipulation is between the IRS and appellant, not FTB and appellant. Furthermore, appellant has not provided sufficient evidence to demonstrate FTB’s determination, as adjusted, is incorrect. Thus, OTA finds that appellant has not met his burden of proof. Accordingly, FTB’s assessment of additional tax must be sustained.

HOLDING

Appellant has not established error in FTB’s proposed assessment of additional tax for the 2010 tax year.

DISPOSITION

FTB’s action is sustained.

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*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

We concur:

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

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

Date Issued: 1/24/2023