

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. GLENN

) OTA Case No. 22029705
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OPINION

Representing the Parties:

For Appellant: D. Glenn¹

For Respondent: Andrea Watkins, Legal Assistant

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Glenn (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,510, plus applicable interest, for the 2017 tax year.²

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment.

FACTUAL FINDINGS

1. Appellant filed a 2017 joint California resident income tax return. On that return, he subtracted wages of \$118,702 from his California adjusted gross income (AGI) and requested a refund, which FTB issued.

¹ Although appellant filed a 2017 joint California tax return, his spouse did not sign the appeal letter and therefore is not a party to this appeal.

² Appellant does not specifically contest the interest imposed and therefore it will not be addressed further.

2. Subsequently, FTB determined the wage subtraction was improper and issued a Notice of Proposed Assessment (NPA) that included those wages in appellant's California AGI and proposed additional tax, plus applicable interest.
3. Appellant protested the NPA, but FTB affirmed it with a Notice of Action. This timely appeal followed.

DISCUSSION

FTB's proposed assessment of additional tax is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Appeal of Bindley*, 2019-OTA-179P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

California residents, such as appellant, are taxed on their entire taxable income regardless of source. (R&TC, § 17041(a).) Except as otherwise provided, gross income, which is used in the determination of taxable income, means all income from whatever source derived, including compensation for services. (R&TC, § 17071; Internal Revenue Code, § 61(a)(1).) Because wage income is taxable gross income, appellant improperly subtracted his wages of \$118,702 from his California AGI on his 2017 California tax return.

Appellant does not dispute his wages were improperly subtracted. Rather, at protest, appellant argued he relied on tax preparation software to compute his 2017 taxes, and on appeal, he seems to indicate there was an issue with his filing status on his 2017 California return. However, FTB's proposed assessment is solely based on appellant's improper exclusion of his taxable wages from his California AGI, and appellant has not shown error in FTB's determination or even alleged those wages are not taxable.

HOLDING

Appellant has not shown error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

Kenneth Gast

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Kenneth Gast

Administrative Law Judge

Date Issued: 10/24/2022