

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. LARKINS

) OTA Case No. 22029768
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OPINION

Representing the Parties:

For Appellant: C. Larkins

For Respondent: Maria Brosterhous, Tax Counsel IV

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Larkins (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$3,202.00, an accuracy-related penalty of \$640.40, and applicable interest for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE¹

Whether appellant has shown error in respondent’s proposed assessment, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely California income tax return for the 2016 tax year.
2. Respondent later received information that the IRS had made adjustments to appellant’s 2016 federal income tax return. Respondent examined appellant’s 2016 California return and made proposed adjustments, which corresponded to the federal adjustments.

¹ Appellant appeals respondent’s imposition of the accuracy-related penalty, but makes no separate argument and provides no evidence to show respondent erred in its imposition. Appellant also does not argue that he is entitled to abatement. We also find no evidence of error or grounds for abatement in the record and will not discuss this further.

3. Respondent issued a Notice of Proposed Assessment (NPA) on August 24, 2020.
4. Appellant protested the NPA, and respondent requested additional information to support appellant's protest. Appellant did not respond.
5. Respondent affirmed its proposed assessment and issued a Notice of Action dated January 31, 2022.

DISCUSSION

Appellant has not shown respondent erred in its proposed assessment. Taxpayers must either concede the accuracy of a federal determination or state why it is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct, and taxpayers bear 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 a determination based on federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that the respondent's determination is incorrect, it must be upheld. (*Appeal of Valenti*, 2021-OTA-093P.) A taxpayer's failure to produce evidence within his or her control gives rise to a presumption that such evidence is unfavorable to their case. (*Appeals of Kwon, et al.*, 2021-OTA-296P.)

Appellant has not provided documents to show that either respondent's or the IRS's adjustments are erroneous. Appellant provided a letter to the IRS dated November 29, 2020, that references "expense reports, bank statements and check copies" to support various denied deductions; however, based on the federal account transcript, the IRS was not persuaded by appellant's letter and its attachments.² Appellant has not provided the same evidence to OTA that he purportedly provided to the IRS. Moreover, there is no other evidence in the record that shows error in respondent's proposed assessment. OTA gave appellant ample opportunity during the briefing period to provide additional documentation but has not received any response. As stated above, unsupported assertions are insufficient to satisfy appellant's burden of proof. (*Appeal of Gorin, supra.*) Consequently, appellant has not met his burden of proof to show respondent erred in its proposed assessment.


² Appellant asserts the IRS is reconsidering the outcome of the federal audit. However, respondent provided appellant's federal account transcript showing the IRS accepted an offer in compromise for the 2016 tax year, which means that the tax liability has become final. (Internal Revenue Code, § 7122; Treas. Reg. § 301.7122-1.) Thus, the opportunity for appellant to dispute the IRS's adjustments has seemingly passed.

HOLDING


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

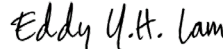
DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 2/14/2023