

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. BIGGAM

) OTA Case No. 220610515
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OPINION

Representing the Parties:

For Appellant: J. Biggam

For Respondent: Eric R. Brown, Tax Counsel III

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Biggam (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,297, and applicable interest, for the 2015 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.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant timely filed his 2015 California resident income tax return.
2. FTB subsequently received information from the IRS indicating that it examined appellant’s federal return for the 2015 tax year and issued a final federal determination disallowing itemized deductions totaling \$65,750, including deductions for cash contributions, medical and dental expenses, and other miscellaneous expenses subject to

- the two percent adjusted gross income limitation. Instead, the IRS allowed the standard deduction.
3. FTB issued to appellant a Notice of Proposed Assessment (NPA) proposing to follow the IRS adjustment and disallow the same itemized deductions and allow the standard deduction, resulting in proposed additional tax of \$1,297, plus applicable interest. Appellant timely protested the NPA and requested additional time to respond.
 4. Ten months later, FTB responded to appellant's request for an extension and stated that it received information from the IRS indicating the federal assessment for tax year 2015 was final. FTB requested appellant respond and provide evidence that the federal assessment was not yet final to delay further action by FTB. Appellant did not respond.
 5. Six months later, FTB issued a letter to appellant stating the details of the final federal determination and requesting a response. Appellant did not respond.
 6. FTB issued a Notice of Action affirming the NPA.
 7. This timely appeal followed.

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. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *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. (*Appeal of Valenti, supra.*)

Here, FTB received information from the IRS indicating that it had increased appellant's federal taxable income by \$48,387 for the 2015 tax year in a final federal determination. FTB obtained appellant's 2015 federal account information, which indicated that the IRS disallowed itemized deductions totaling \$65,750 and allowed the standard deduction instead. Thus, it is appellant's burden to show that FTB's proposed assessment based on the final federal determination is erroneous.¹

¹ For personal income tax purposes, California generally conforms to Internal Revenue Code provisions relating to itemized deductions, except as otherwise provided. (R&TC, § 17021.) A taxpayer must generally report the same itemized deductions reported on their federal return on his or her California return, subject to California-specific adjustments.


On appeal, appellant stated that he has been unable to gather documentation relevant to this appeal due to COVID-related health issues. Appellant also requested additional time to pay the tax because of financial hardship. While OTA is sympathetic to appellant's ill health and financial hardship, OTA lacks authority to make discretionary adjustments to the amount of tax assessed based on a taxpayer's inability to pay.² (*Appeal of Robinson*, 2018-OTA-059P.) The function of OTA in the appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*) Appellant has not presented any argument or evidence to show error in the federal adjustments or in FTB's determination based on those adjustments. Accordingly, appellant has not demonstrated error in FTB's proposed assessment and FTB's assessment must be sustained.

HOLDING

Appellant has not shown error in FTB's proposed assessment of tax, which is based on a final federal determination.

DISPOSITION

FTB's action is sustained.

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Veronica I. Long
Administrative Law Judge

Date Issued: 1/24/2023

² After the decision in this appeal becomes final, appellant may wish to contact FTB to determine eligibility for its offer in compromise program or whether an installment payment agreement is appropriate. (See, for example, <https://www.ftb.ca.gov/pay/if-you-cant-pay/offer-in-compromise.html>, for information on FTB's offer in compromise program, and <https://www.ftb.ca.gov/pay/payment-plans/index.asp>, for information on FTB's installment payment program.)