

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

In the Matter of the Appeal of:  
**D. CERVANTES**

) OTA Case No. 21037373  
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**OPINION**

Representing the Parties:

For Appellant: D. Cervantes

For Respondent: David Muradyan, Tax Counsel III

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Cervantes (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,099.62 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**

Whether appellant has established error in FTB’s proposed assessment for the 2015 tax year.

**FACTUAL FINDINGS**

1. Appellant timely filed a joint 2015 California income tax return with his then-spouse, which FTB accepted.
2. The IRS adjusted appellant’s 2015 federal tax return to account for \$9,550 of unreported pensions/annuities, \$2,343 of unreported wages, and \$300 of unreported interest income. The IRS also reduced appellant’s miscellaneous deduction by \$244 as a result of the adjustment to appellant’s income.
3. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) dated June 20, 2019, that made corresponding adjustments to appellant’s California income and

- deductions, which resulted in a proposed additional tax of \$1,099.62, plus applicable interest.
4. Appellant protested the NPA but did not respond to FTB's subsequent communications. Consequently, FTB issued a Notice of Action (NOA) affirming the NPA.
  5. This timely appeal followed.

#### DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. 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.*)

Here, FTB received information from the IRS that it had adjusted appellant's federal adjusted gross income for the 2015 tax year to include unreported pensions/annuities, unreported wages, and unreported interest. FTB followed the IRS's adjustments and made conforming changes to appellant's California income and deductions. These changes resulted in FTB's proposed deficiency assessment against appellant. Therefore, FTB's proposed assessment is based on a federal adjustment and is presumed to be correct. (*Appeal of Valenti, supra.*) Consequently, the burden is upon appellant to prove that FTB's determination is erroneous. (*Ibid.*)

On appeal, appellant states that he believes the proposed assessment was made in error because he did not receive the letters referenced in the NOA.<sup>1</sup> Appellant also argues that FTB has not explained the basis for the proposed assessment. Appellant further argues that he no longer communicates with his former spouse and is unable to request information from her. These arguments, however, do not address the substantive issue here: whether FTB's proposed assessment is erroneous. The Office of Tax Appeals does note, however, that FTB, by way of

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<sup>1</sup> The NOA states, "[FTB] affirmed [its NPA] dated 06/20/2019 because [appellant] did not reply to [FTB's] letters dated 09/27/2019, 01/15/2020, and 07/23/2020." In his appeal, appellant requested FTB provide appellant a copy of those letters, but the Office of Tax Appeals (OTA) cannot confirm whether FTB did so. OTA does note, however, that FTB mailed the NPA and NOA to appellant's last known address at the time of mailing (obtained from appellant's 2017 and 2018 tax returns), in accordance with R&TC section 18416(b) and (c), and that there is no evidence in the record indicating appellant otherwise informed FTB, in writing, of a change of address.

the NOA and its opening brief in this appeal, has confirmed and explained its basis for its proposed assessment against appellant. As appellant’s arguments do not attempt to refute the correctness of FTB’s proposed assessment, and no evidence has been provided to establish the proposed assessment is in error, appellant has not met his burden of proof.

HOLDING

Appellant has not established error in FTB’s proposed assessment for the 2015 tax year.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Lauren Katagihara*  
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Lauren Katagihara  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
48745BB806914B4  
\_\_\_\_\_  
Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Keith T. Long*  
DC88A60D8C3E442  
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Keith T. Long  
Administrative Law Judge

Date Issued: 3/7/2023