

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220610644  
H. YIN AND )  
C. GUO )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: H. Yin and C. Guo

For Respondent: Andrea Watkins, Legal Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, H. Yin and C. Guo (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,041, and applicable interest, for the 2010 tax year.

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

**ISSUE**

Whether appellants have established error in FTB’s proposed assessment for the 2010 tax year, or the final federal determination on which it is based.

**FACTUAL FINDINGS**

1. Appellants filed a joint Form 540, California resident income tax return for the 2010 tax year. FTB processed the return, accepted it as filed, and issued the requested refund.
2. FTB subsequently received information from the IRS that it had reviewed appellants’ 2010 federal return and increased appellants’ taxable income due to omitted pension/annuity income totaling \$29,863. The increased income was reported on 1099-R by Fidelity Investments and The Vanguard Group. As a result, the IRS assessed additional tax of \$8,855.

3. Appellants did not report the federal adjustments to FTB. FTB reviewed appellants' account and issued a Notice of Proposed Assessment (NPA) following the final federal determination, increasing appellants' income and proposing additional state income tax of \$3,041 plus interest.
4. Appellants protested the NPA on the grounds that they never received the original tax refund. FTB responded with letters requesting additional information. Appellants did not respond and FTB issued a Notice of Action affirming the NPA.
5. This timely appeal followed.

### DISCUSSION

A taxpayer shall concede the accuracy of a final federal determination to a taxpayer's income or state where the determination is 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 FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of the evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P, fn. 6.) In the absence of credible, competent, and relevant evidence showing FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra.*)

Appellants do not appear to object to the assessment of additional tax, but rather seek equitable relief. Appellants state that they no longer have records from the 2010 tax year and that while C. Guo lives in California, H. Yin currently lives in China and it would not be fair for C. Guo to pay the outstanding balance. Appellants have not provided any support to show that either the federal or state additional tax assessments were in error. Therefore, it must be upheld.

Regarding appellants' arguments that it would be unfair for one spouse to pay the liability,<sup>1</sup> FTB has statutory authority to settle disputed liabilities with the taxpayer and to compromise certain final liabilities. (R&TC, §§ 19442, 19443.) The Office of Tax Appeals (OTA), on the other hand, has no statutory authority to settle a disputed tax liability or to

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<sup>1</sup> Spouses that file a joint return are jointly and severally liable for the tax on the total income on the return. (R&TC, § 19006.) The tax can be collected from either or both spouses unless modified by court order or by FTB through an innocent spouse claim. Appellants have not argued or provided evidence to support either of these possibilities.

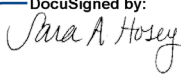
compromise a tax liability. Further, OTA has no jurisdiction over FTB’s settlement, installment agreement, or offer in compromise programs. OTA’s function is to determine the correct amount of a taxpayer’s California income tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) While OTA is cognizant that a taxpayer’s financial situation may ultimately render a liability uncollectible, the question of ability to pay versus that of determining the correct amount of the tax liability are two separate and distinct concepts. OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer’s ability to pay. (*Ibid.*)

HOLDING

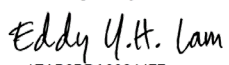
Appellants have not established error in FTB’s proposed assessment for the 2010 tax year, or the final federal determination on which it is based.

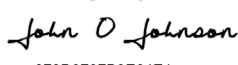
DISPOSITION

FTB’s action is sustained.

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Sara A. Hosey  
Administrative Law Judge

We concur:

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Eddy Y. H. Lam  
Administrative Law Judge

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John O. Johnson  
Administrative Law Judge

Date Issued: 3/10/2023